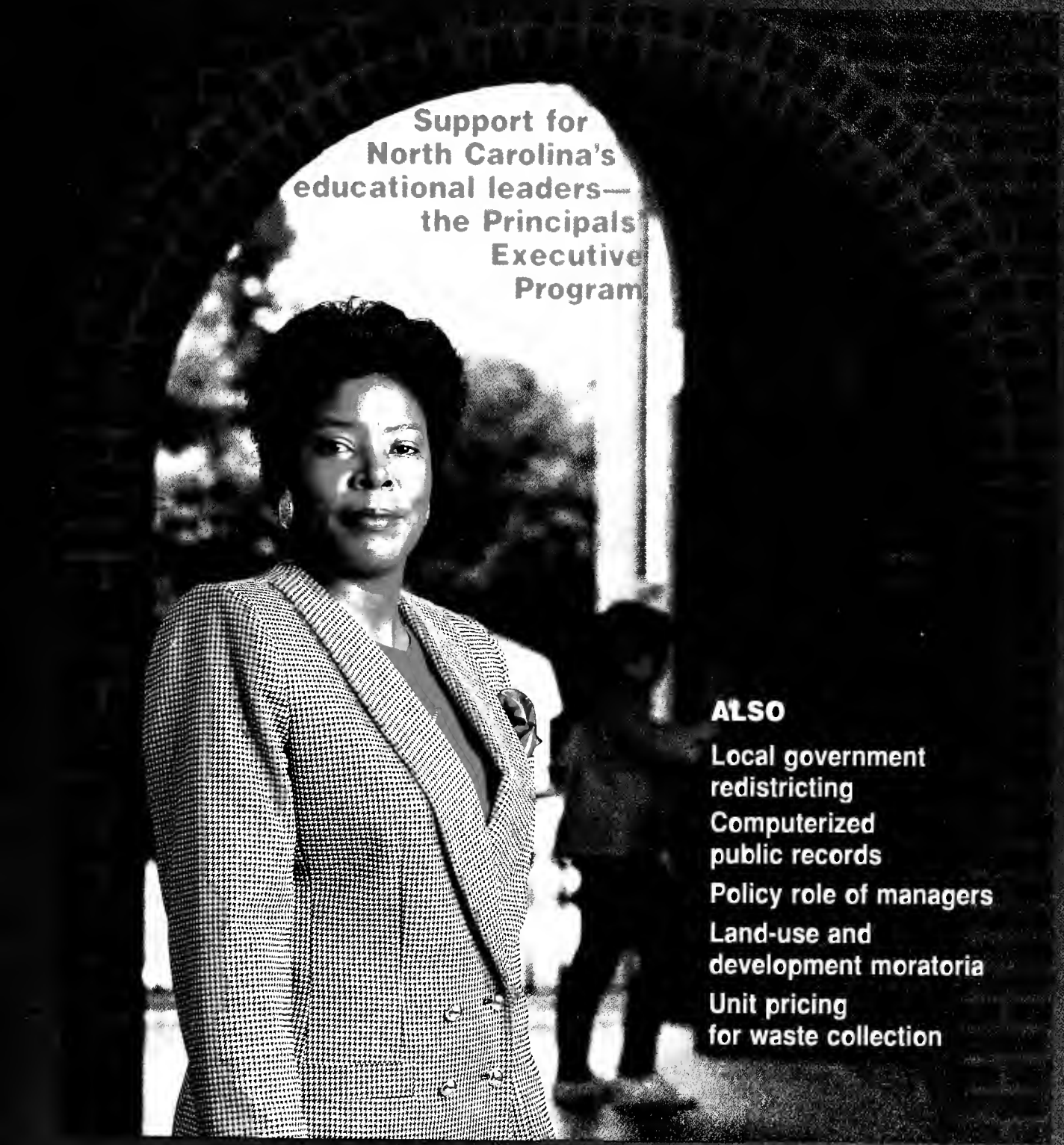
Fall 1990 Vol. 56 No. 2

# Popular Government

Institute of Government • The University of North Carolina at Chapel Hill



## Support for North Carolina's educational leaders—the Principals' Executive Program

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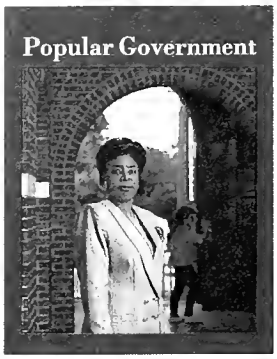


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**On the Cover**

Christine C. Fennell, principal of Balfour Elementary School in Asheboro, North Carolina, is one of 821 principals to have graduated from the Principals' Executive Program.

Photograph by Bob Donnan.

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# Redistricting for Local Governments

Michael Crowell

In 1991 many local governments in North Carolina will face redistricting for the first time. Since the last census in 1980 several dozen boards of county commissioners, city councils, and school boards have switched from at-large to district methods of elections, or combinations of districts and at-large seats. Population data from the 1990 census may require the local governments that have switched, as well as the several others that have had districts for some time, to draw new lines.

Redistricting is a process that is not "to be entered into unadvisedly or lightly, but reverently, discreetly, advisedly, soberly and in the fear of God."[1] This article is meant to reduce the fear a little.

## One Person, One Vote

Since they first got into the redistricting business in the 1960s, the federal courts have established some relatively simple rules. Most important is the concept of one person, one vote: Public officials, such as legislators, who are elected to represent others should each represent about the same number of people. Other factors, such as geography or economic interests, must give way to population equality. Or, as the Supreme Court said, "people, not land or trees or pastures, vote."[2] Significant disparity in the population of election districts violates the equal protection clause of the United States Constitution.[3] The one person, one vote rule applies not only to Congress and state legislatures but also to local governmental bodies with legislative functions.[4] That includes boards of county commissioners, city councils, and school boards.

Redistricting is necessary, of course, only for local governments with election districts. In early 1990, most local boards in North Carolina were still elected at large, but twenty-eight of the one hundred boards of county commissioners had election districts, as did thirty-three city councils. Another twenty-five county boards and twenty-three city councils used *residency* districts. A residency district is one in which a candidate must live to be eligible for a particular seat, but everyone in the county or city still gets to vote for that office.

Because the elections are at large, and thus each person's vote has equal weight, the equal protection clause does not require residency districts to be equal in population.[5] The North Carolina statute concerning boards of county commissioners follows the constitutional rule by saying that county residency districts do not have to be equal in population.[6] The statute on city council districts, on the other hand, goes beyond the constitutional requirement by declaring that all districts or wards used in city elections must be equal, even if they are only residency districts.[7]

In the few places where districts are used for primaries but the general election is then held county- or city-wide, the nominating districts must be equal in population.[8]

Whether districts are equal in population is measured by the districts' total population according to the most recent federal census.[9] That is, districts must have about the same number of people when everyone, regardless of age, is counted. District lines may be based on the number of registered voters when that method will not bring an appreciably different result.[10] For areas with military bases, military personnel are included in determining a

*The author, a former Institute of Government faculty member, is an attorney with the Raleigh firm of Tharrington, Smith & Hargrove.*

district's population.[11] Nonresident aliens should be excluded from the count, however.[12]

For local government districts, being equal in population generally means that there must be no more than a 10 percent overall deviation from the ideal size.[13] A simple example will illustrate. Suppose a county has a total population of 50,000 and uses five districts for electing commissioners. Ideally each district would have exactly 10,000 people. Say, however, that the least populous district has only 9,700 people, or 3 percent below the ideal, and the most populous has 10,400, or 4 percent above the ideal. The *overall* deviation is the sum of the 3 percent and 4 percent deviations—an overall deviation of 7 percent. The simplest way to stay within an overall deviation of 10 percent is to have no district more than 5 percent above or below the ideal.

Although an overall deviation of no more than 10 percent is preferred, in an unusual case a greater variation might be accepted by the courts if justified by peculiar local circumstances.[14] For example, if part of a county consisted of an island, it might be acceptable to make that island a separate district even though doing so would result in a district badly out of kilter with the other districts in the county.

When reviewing 1990 census data, a local government should not overlook the obvious: if existing districts are still within the 10 percent deviation, no redistricting is necessary.

## The Voting Rights Act and Redistricting

### Section 5

Congress passed the Voting Rights Act in 1965 to eliminate discrimination against blacks, Hispanics, Native Americans, and certain other minority citizens in the election process.[15] For most of North Carolina, black citizens are the only sizeable protected minority. Two parts of the act are particularly important to redistricting. The first is Section 5,[16] a portion of the act that requires certain jurisdictions to have changes in their election procedure "precleared" before being implemented. Jurisdictions covered by Section 5 are those that had used literacy tests before they were outlawed by Congress and that had fewer than 50 percent of the eligible voters registered or voting when the Voting Rights Act was passed. The basic premise was that discrimination was more likely to occur in such jurisdictions.

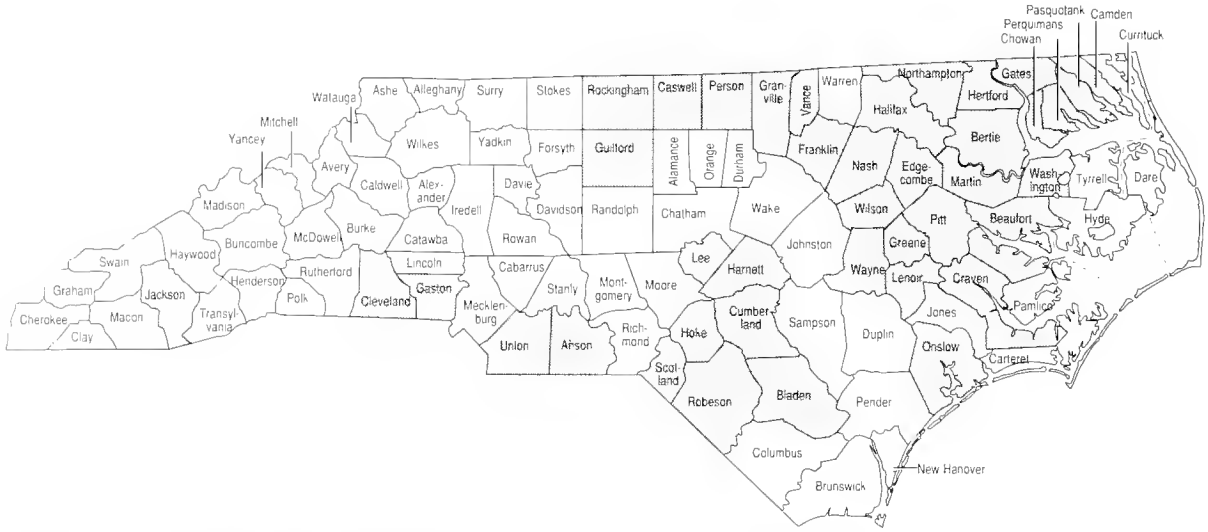
The preclearance requirement applies to the forty North Carolina counties shown on the map in Figure 1. Any change in district lines in the forty counties, no matter what the office—legislative seats, county commissioners, city councils, etc.—must be submitted to the Voting Section of the United States Justice Department for approval before being used.[17] Preclearance is necessary even if the districts are only residency districts. Generally the Justice Department will preclear a redistricting plan unless it is "retrogressive,"[18] that is, unless the new plan makes it more difficult for minorities to elect candidates. If the new districts do not have that effect, the change will be approved.

For most boards the relatively minor adjustments required by the 1990 census will not raise serious questions under Section 5. In many of those forty counties, districts were drawn in the last few years, under the threat of litigation, specifically to improve minority representation. It is not likely that anyone will be anxious to alter those lines to make it harder to elect minorities, and thus incite new legal challenges. Problems will occur, though, in counties where the minority population has decreased noticeably since the last census, making it more difficult to draw districts with a black voting majority. In these locations the test will be whether the redistricting plan provides as fair representation as possible for minorities in light of the new population counts.

The more frequent problem under Section 5 will be delay in receiving preclearance. The law is clear that a redistricting plan for a Section 5 county cannot be implemented until approved by the Justice Department. Although Section 5 and the Justice Department's regulations allow the Voting Section only sixty days to decide on a submission—a change is automatically considered precleared if no answer is given in that time—the process usually takes much longer. The Voting Section frequently asks for additional information on the sixtieth day, thereby extending the deadline until sixty days after the new information is received.

Considering that redistricting submissions are the most complex for the Voting Section to review, and that the number of such submissions will be greater in 1991 because of the number of boards that converted to districts in the 1980s, no one should expect quick approval of a redistricting plan. The plan ought to be completed early in the fall of 1991 to have any chance of preclearance in time for the regular 1992 spring primaries. This problem is one reason the North Carolina leg-

Figure 1
Counties Subject to Section 5 of the Voting Rights Act




islature in 1990 gave cities the choice of postponing their fall 1991 elections to the spring of 1992.[19]

## Section 2

Another part of the Voting Rights Act, Section 2,[20] also will weigh heavily in redistricting. Section 2 is applicable to all counties in North Carolina, indeed to the whole country. Stated simply, Section 2 prohibits any form of discrimination in elections. It has been used by minority groups to ban at-large elections in places where they have been unable to elect candidates. Most of these lawsuits have followed Congress' 1982 amendments to Section 2, which eliminated the need to show that the at-large election system had been adopted for the *purpose* of discriminating. Instead, a violation may be proved by showing that at-large elections have had the *effect* of preventing the election of blacks. The usual remedy for a Section 2 violation is the establishment of a district system of election in which black voters have the majority in some districts.

Multi-member districts for the North Carolina General Assembly were the first to fall after Section 2 was amended, being replaced by a number of new single-member districts. That landmark Supreme Court decision in *Thornburg v. Gingles*[21] inspired numerous other challenges that required districts to be drawn for many boards of county commissioners, city councils, and school boards.[22] Figure 2 shows the counties in which at least one local board has changed its election method in response to a recent Voting Rights Act challenge.

For those boards that have already adopted districts because of Section 2, redistricting means maintaining the same level of minority representation. For other counties and cities that have sizeable minority populations but still use at-large elections in which black candidates have had little success, the 1990 census will provide new, more detailed data for minority groups to show that it is possible to draw districts in which they have a voting majority.

# Other Limits on Redistricting

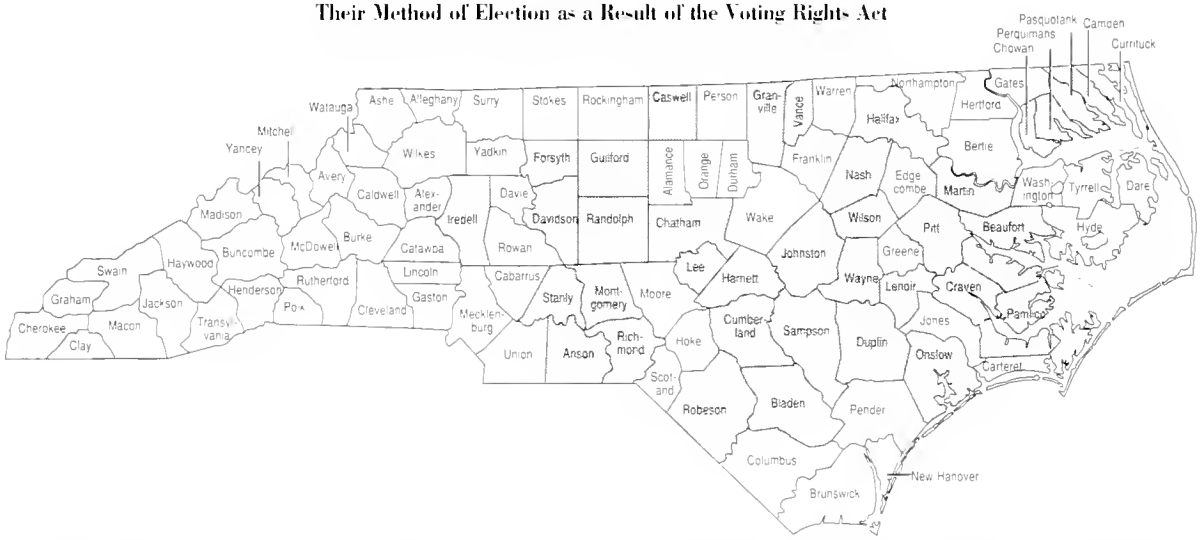
## Contiguous Territory

Although not a constitutional requirement, it is generally accepted that election districts should consist of territories with adjoining boundaries. This requirement is imposed by statute for county commissioner districts[23] but is not mentioned in the law governing city councils.[24]

## Partisan Gerrymandering

A new and unknown factor in the redistricting process is the requirement that a redistricting plan not be drawn to intentionally discriminate against one political party. Before 1986 the United States Supreme Court had treated claims of partisan gerrymandering as "nonjusticiable": the federal courts would not hear such lawsuits. In other words, these were political questions better left to the legislature. But then in a lawsuit from Indiana the Supreme Court held that federal courts could con-

**Figure 2**
**Counties in Which One or More Local Boards Have Changed Their Method of Election as a Result of the Voting Rights Act**




sider cases brought by political parties claiming that district lines had been drawn to deny them their rightful share of representatives.[25] To succeed on such a claim the complaining political party must prove that the redistricting plan was drawn intentionally to discriminate and that, indeed, it has that effect. The results of one election were not sufficient to show a discriminatory effect in the Indiana case.

Boards redistricting after the 1980 census did not have to worry about lawsuits from political parties. Now that the Supreme Court has opened the door to such litigation, however, the upcoming round of redistricting will undoubtedly bring a number of such claims. For cities and school boards that use nonpartisan elections, the likelihood of such a lawsuit is slim, but for counties it is a threat to be taken seriously.

## The Census Data

Federal law establishes the timing of the census. The count took place on April 1, 1990, though considerable time has been required to follow up on the many people who did not return forms. At the end of 1990 the president of the United States is to receive and announce the total population for each state. This information will establish the apportionment of seats in the House of Representatives. North Carolina seems likely to receive a twelfth congressional seat as a result of the 1990 count.

By April 1, 1991, the Census Bureau is to report to each state the detailed data needed for legislative and local redistricting—what is known as *P.L. 94-171 data.*[26] At that time each county and city will know the number of people—by race, voting age population, and other categories—for each census enumeration district and each smaller census unit. Counties and cities are divided into enumeration districts defined by roads, rivers, or visible boundaries. Maps will be available to show the lines of enumeration districts and other census units. The data will be available in printed form and on computer tapes. The new TIGER[27] data base will allow governments and others to purchase computer maps loaded with different kinds of census data, including the information needed for redistricting.

Over the past couple of years all counties in the state with 50,000 population, and some with fewer people than that, have participated in a project of the Census Bureau to redraw precinct lines to follow the same natural boundaries as enumeration districts. In those counties the 1990 census data will be reported by precinct also. The 1990 census data also will be available for units smaller than enumeration districts in all counties and cities. P.L. 94-171 numbers will be provided for each individual block in every incorporated municipality in the state. By contrast, block data from 1980 generally was provided only for towns of 15,000 or more. Likewise, in 1990 all unincorporated areas will be subdivided into the equivalent of blocks—any area that can be enclosed by roads, streams, or other natural boundaries—and data will be available for each such tract. In short, the census data to be reported in 1991 will be much more detailed than in the past.

Some of the data reported on April 1st will make no sense. There will be glitches. The report for one county may show zero population for the whole county but one enumeration district with 500,000 inhabitants. Mistakes like that occur with every census and obviously will have to be corrected. As a result of a lawsuit the Census Bureau also has agreed to make some special statistical studies after April 1st to see whether it has undercounted particular groups or areas and, if justified, to revise its P.L. 94-171 reports. Those revisions are due mid-July of 1991.

As should be apparent, the 1990 census has been designed to aid redistricting more than at any time in the past. Numbers will be available for every small area in a city or county, allowing line drawers to chop up the jurisdiction any way necessary to accomplish the objectives of the one person, one vote rule and the Voting Rights Act. With so much information, though, the process may take longer because there will be so many more alternatives for placing the lines.

## The Mechanics of Redistricting

State law provides that the board of county commissioners and the city council are responsible for reviewing and redrawing, if necessary, their own districts.[28] The new lines are formalized by adoption of a resolution and become applicable to the next election. State law is silent about the redistricting of school boards, but it is expected that legislation will be passed in 1991 giving those boards authority to draw their own lines. Because general state law provides only for at-large school board elections, the lines for those boards with election districts were set either by local act of the General Assembly or court order.

While the board of commissioners or city council itself must finally approve the new districting scheme, either may delegate some or all of the preparatory work to its staff or outside consultants. With proper instruction on the issues discussed in this article, a county or city planning staff can prepare maps for the governing board to review. In a small county or town, the manager can do that same thing. If, however, the redistricting is likely to be controversial—especially if the realignment may pit one incumbent against another—the manager and planning director will want to avoid being involved. Drawing district lines can be an extremely political process, and a smart manager or planner will try to stay out of the cross fire.

A local board might want to consider appointing a districting committee to advise it. By putting on the committee representatives of each race and political party, the board will know the interests of all groups and avoid some later criticism of the new lines. The danger with such a committee, obviously, is that it might come up with a plan the board does not like. Although legally the board has the final say on any plan, politically it may be difficult to reject a committee's proposal.

A citizen's districting committee, or a committee consisting of members of different local boards, could be particularly useful in a county in which lines must be drawn for more than one board. Voters and election officials become confused when different lines are used for the school board and board of commissioners, and those lines conflict with the ones used for legislative and congressional districts, all of which are on the ballot at the same time. Although the problem of crossing lines cannot be avoided altogether, some of the inconsistencies can be eliminated by coordinating the local redistricting efforts.

Another way to allow people outside the board to have their say is to hold one or more public hearings on the redistricting plan. No hearing is required by law, but it is certainly permissible. In the forty Section 5 counties, whose plans will have to go to the United States Justice Department for preclearance, a public hearing is one means of assuring that the minority community has an opportunity to see and comment on the districts, and affect how they are drawn, before the new plan is adopted.

There are a few consultants available to assist local governments—for a fee, of course. No public agency provides this service for counties and cities. In a jurisdiction that has had or anticipates problems under the Voting Rights Act, or where the redistricting otherwise is expected to be hotly contested, the money spent on an outside expert may be a good investment. Even if the local board decides to do its own redistricting, some problems may be avoided by hiring a consultant to instruct local employees in the rules of redistricting and to guide the board in meeting the requirements discussed in this article.

Local governments should be wary about buying computer programs to help with redistricting. There are some software packages that can be useful, but in many cities and counties the job can be done more easily and less expensively without computers, or the existing resources can be adapted easily to this new task.

A final word of advice is not to underestimate the difficulties of redistricting. In the abstract the job sounds fairly simple: in practice it can be very frustrating. Commissioners, council members, and board members should be warned in advance that the lines will not turn out as they expect. As Richard Rogers, a British architect, said: "The question architects are asked most often by clients is 'Why didn't you tell me it would turn out this way?' Almost always the answer is 'Because I didn't know.'" The same applies to redistricting. ❖

## Notes

1. Protestant Episcopal Church. *The Book of Common Prayer* (New York: The Church Pension Fund, 1945) (instructions for marriage ceremony).

2. Reynolds v. Sims, 377 U.S. 533, 580 (1964).

3. Baker v. Carr, 369 U.S. 186 (1962); *Reynolds*, 377 U.S. 533.

4. Avery v. Midland County, 390 U.S. 474 (1968).

5. Dusch v. Davis, 389 U.S. 112 (1967); Dallas County, Alabama v. Reese, 421 U.S. 477 (1975).

6. N.C. Gen. Stat. § 153A-22(g).

7. N.C. Gen. Stat. § 160A-101(6)c.

8. *Avery*, 390 U.S. 474; *Dusch*, 389 U.S. 112.

9. *Reynolds*, 377 U.S. 533.

10. Ely v. Klahr, 403 U.S. 108 (1971).

11. Davis v. Mann, 377 U.S. 678 (1964).

12. WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964).

13. White v. Regester, 412 U.S. 755 (1973); Gaffney v. Cummings, 412 U.S. 735 (1973).

14. Mahan v. Howell, 410 U.S. 315 (1973); Abate v. Mundt, 403 U.S. 182 (1971).

15. A general history of the Voting Rights Act may be found in "The Voting Rights Act in North Carolina—1984," by Michael Crowell, *Popular Government* 50 (Summer 1984): 1–9.

16. 42 U.S.C. § 1973c.

17. The United States District Court for the District of Columbia may also preclear a change, but this procedure is rarely used.

18. Beer v. United States, 425 U.S. 130 (1976); City of Lockhardt v. United States, 460 U.S. 125 (1983).

19. 1989 N.C. Sess. Laws ch. 1012.

20. 42 U.S.C. § 1973.

21. 478 U.S. 30 (1986).

22. See "North Carolina Local Government after *Gingles*," by Michael Crowell, *Popular Government* 51 (Summer 1985): 15–20.

23. N.C. Gen. Stat. § 153A-22(c).

24. N.C. Gen. Stat. § 160A-23, -101.

25. Davis v. Bandemer, 478 U.S. 109 (1986).

26. Named after the 1975 law that first required those details to be reported.

27. Topically Integrated Geographic Encoding and Referencing.

28. N.C. Gen. Stat. §§ 153A-22 (counties), 160A-23 (cities).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# The Principals' Executive Program: A

Photographs by Bob Donnan

# New Road to Educational Excellence

Margaret Taylor

When Governor James Martin and Chancellor Paul Hardin of The University of North Carolina at Chapel Hill *both* turn up for commencement exercises, you know that this is not your average graduation. You're right. This ceremony, held in April at the Institute of Government in Chapel Hill, celebrated the considerable achievement of thirty-five North Carolina public school principals in completing the twenty-first Principals' Executive Program. The program, known colloquially as PEP, is having a significant impact on the quality of public education in North Carolina.

## Origins

PEP is unique. It is a professional-level management course for principals (and more recently, superintendents), designed and especially taught so as to give them help and inspiration in becoming effective leaders in their schools. The program was conceived early in the 1980s by C. D. Spangler, then chairman of the State Board of Education and now president of the University of North Carolina. Spangler recognized that if the nation is to solve its problems in education, it will have to work through the principals of the individual schools, because the principal's office is where most attitudes of a school are formed. That is where the school's goals and standards arise and where the school is motivated, or not motivated, to meet them. It's where discipline is meted out, where the school's budgeting is done, and where most of the front-line decisions about the school are made.

Principals bear a huge burden. Furthermore, most of them have not been trained for their responsibilities. They often rise to the principal's office as a reward for performing well in the classroom, and they have little experience in managing a sizable organization or in the human skills of leadership. Spangler saw that principals need help. He proposed a program for principals similar to the executive management course taught at Harvard, and he persuaded James B. Hunt, then governor, and the General Assembly to come on board. The legislature appropriated the funds for a pilot program in 1983, and the Principals' Executive Program began the next year.

Chris Fennell visits with students on the playground of Balfour Elementary School in Asheboro, where she is principal (*left*). Fennell graduated with the PEP XVII class in 1989.

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*The author was formerly managing editor at the Institute of Government.*

# The School Improvement Project

In his book *A Place Called School*, John Goodlad talks about the school as the individual unit where change in education can occur. If reform in schooling takes place, it is going to happen school by school, and the principal of each school has much responsibility for seeing that positive change does occur. The Principals' Executive Program (PEP) attempts to help its participants carry out this responsibility. One major effort in that endeavor is the School Improvement Project (SIP).

In meeting the SIP requirement, each PEP participant writes and implements a long-range plan to improve some aspect of his or her school. The SIP gives the principals an opportunity to put into practice the management and leadership concepts they learn in PEP. It also helps them develop the ability to look critically at their school's needs, analyze its strengths and weaknesses, and chart strategies for its improvement.

PEP participants are asked to include seven components in their written plan for school improvement:

- **A vision statement.** A statement describing the intended result of the SIP—that is, what the school will be doing more effectively because of this project.
- **An analysis of the program's current status.** A comparison of the existing school program with the one that will exist when the vision has been realized.
- **Objectives.** A list of goals that will be accomplished with the SIP.
- **An action plan.** A chronological list of the major things that must be done in order to achieve the improvement sought.
- **A list of needed resources.** An analysis of what is needed—time, money, personnel—to carry out the SIP.
- **Evaluation criteria.** A statement that lists the criteria for judging the project's success, once the project is completed.
- **Monitoring procedure.** A description of how the project will be reported to those interested in its progress—school administrators, the board of education, faculty, parents, and students.

Ideas for projects can come from several sources—from the principal's faculty, from PEP faculty or staff, or from fellow PEP participants. The principal may take one or more proposals back home to seek the faculty's suggestions and support for an idea that arose at PEP, or the principal may brainstorm with the faculty to solicit their suggestions and eventual commitment to a topic that originated with them. Whatever the source of the SIP idea, it is essential that the principal have his or her faculty's support for the project.

Most SIPs introduce a new program in the principal's school, but some are continuations of programs that began before he or she came to PEP. For example, a principal might select as an improvement project the further development of a second-language program that had been started but needed another year or two to get firmly established. Some projects that PEP alumni are now working on include implementing student and staff recognition programs, developing dropout-prevention programs, implementing seminar teaching, and improving standardized test scores.

Let's look at a SIP, well conceived and well executed, that achieved its purpose. Tom King, a principal from Wake County who attended the PEP XVIII class, knew that a school's success depends in considerable measure on the degree to which parents are involved in what goes on there. When there is parental involvement, when students know that their parents care about education and about how well they do, when teachers feel appreciated—then teachers' morale improves, students work

*The author is PEP's assistant program director for School Improvement Projects.*

more enthusiastically, and the quality of education goes up. So King set about to get parents involved and to foster mutual appreciation of parents, teachers, and students in his school.

Four special sessions designed to do this were scheduled during the school year. At the first one, parents and teachers signed contracts that stated their respective responsibilities in helping their children succeed in school. At the second session, the school staff presented information about how parents could participate in their children's learning, and awards were given to parents who had demonstrably become more active with the school and their child's learning. Session three explained the school's testing program, and parents received certificates if they had (1) arranged for their child to get a Wake County library card, (2) regularly listened to their child read, and (3) read to their child in compliance with the contract signed in the fall. The last session featured dessert and coffee, and the faculty talked about how the parents could help their children build on their skills during the summer.

King reports that the program is accomplishing what it was designed to do. The parents finished the school year feeling that they understood what is going on in the school, and a friendly partnership between parents and teachers has grown up there—to the advantage of the children.

Planning for change is among the greatest challenges facing school principals today. The SIP requirement of the Principals' Executive Program is intended to help participants face that challenge. In writing and carrying out a successful improvement plan, principals become the "head gardeners" that Goodlad says they should be—cultivating and tending the school environment to create a healthy climate for learning.

*—Joseph Miller*

## Goals

The ultimate aim of the program is to insure that students learn to use their minds well, that they graduate with a good foundation in the basic subjects, and that they regard education as a lifelong process. PEP's goal is to reinforce the principals' commitment to this purpose and increase their ability to lead their school toward accomplishing its task. It teaches them leadership skills and administrative techniques as managers of people, property, and budgets. PEP also provides its participants intellectual stimulation—new knowledge and new ways of thinking. In particular, it teaches principals to have new expectations of themselves—to see themselves as people who can make a difference in North Carolina public education.

The site for the program, which draws principals from across the state, is the Institute of Government, a part of UNC–CH. The Institute was chosen because of its long experience in teaching management and administration to public officials and its reputation for high standards. The 160-hour course is taught in residence at the Institute four times a year. Thirty-five principals, all nominated by their respective superintendents, participate in each program, which extends for either two or three months. The principals come to the Institute for several sessions that last for either four or five days. Between sessions they return to their schools to carry on their responsibilities there. All of their expenses except transportation are paid by the state of North Carolina.

## The Program

PEP begins for the participants soon after they are notified that they have been accepted for the program. The notice contains a welcoming letter from PEP's director, Robert E. Phay; a general statement of what the program is all about; and two books—Mortimer Adler's *How to Read a Book* and John Goodlad's *A Place Called School*. Three months before they first come to Chapel Hill, the principals receive their first instructional materials—nine books, with study guides, to be read by the time the first PEP session convenes. (See page 16 for a list of assigned PEP readings.) The participants also receive a two-volume treatise on North Carolina school law, several chapters of which are to be read during the course of the program. In addition, the packet contains a copy of the Myers-Briggs personality

test, which the principal is to complete in preparation for later sessions on understanding self and others, and also some assignments that are due on the first day of class.

This is only the beginning. More books, more articles, and more assignments are distributed as the course moves along. Participants are expected to read the books and do the assignments, even as they carry out their usual duties at their schools, and come to PEP prepared to discuss the assigned materials. Those few who are unwilling to do the work are simply asked to leave the program. As one principal said, "PEP is intellectual boot camp."

PEP relies on faculty from the Institute of Government, the School of Business, the College of Arts and Sciences, and the School of Education on the campus of UNC–CH and from the ranks of distinguished scholars and teachers across the state and nation. They use the case method of instruction, in which principals read and then discuss actual situations involving problems they may well have encountered themselves. The instructional materials, which are sent to the principals in advance, often ask them to bring their questions and problems concerning the subject to be studied to the next session, and then the instructor guides the participants as they propose and examine possible solutions to those problems.

One of PEP's major instructional tools is Socratic teaching—seminars in which participants who know that they are expected to be thoroughly prepared grapple with a significant idea, guided by a moderator who merely keeps the discussion on track. There is no effort to find any right or wrong in the issue at hand. The aim is to see the subject from as many sides as possible, an exercise that will one day have application to actual problems. After they have gained some experience with Socratic teaching, the principals themselves serve as moderators in preparation for taking this skill back home to use in exploring problems and new ideas with their own faculty and staff. (See page 14.)

The curriculum covers the broad scope of what principals need to know in achieving excellence in their school. A large segment deals with the nature of leadership and what makes effective leaders. How do you motivate people, and how do you deal with difficult people? What makes people the way they are, all different? And can you make good use of those differences? How do you solve a problem without figurative bloodletting?

Another segment covers effective communication. There are classroom sessions on writing, and principals are asked to do considerable writing of their own. Their essays are read by professional editors, graded, and returned promptly. Individual conferences are scheduled for every principal. One writing assignment asks the participants to write an essay on their philosophy of education, which causes some of them no little difficulty. Some principals have never before sat down to think through what they believe education is all about and what their role in education is.

Other communications sessions focus on the meaning of body language and on conducting a meeting. Participants are individually videotaped so they can see how they come across and how they can make themselves more persuasive or otherwise more effective.

Some class periods deal with methods of teaching and what to teach in certain specific fields—science, fine arts, foreign languages, technology, mathematics, social studies, writing. For example, a nationally recognized chemistry teacher from Vance County demonstrates hands-on teaching of science. And specialists in writing, math, and arts from the Department of Public Instruction also emphasize interactive teaching with solid content. *What* is taught is as important as how it is taught. Appropriate course content is reviewed by an instructor who specializes in the subject.

There also are discussions of ethics and values. In one session the instructor talked for a while about how personal value systems arise and what purpose they serve, and then the class turned to ethical questions (submitted earlier) actually encountered by participants. For example, what do you do if one of your teachers is circulating a rumor, heard elsewhere, that the wife of another teacher has AIDS? Talk with the husband? Talk with the gossiping teacher? Tell the superintendent? Nothing? Whose interests are at stake here? What is their priority, if any? No effort was made to find *the* answer to this problem. Rather, as the participants began to speak, they clearly were recognizing that there are many ways to see a problem, and the principal must work his or her way carefully through them.

The school law component of PEP covers some subjects of great concern to principals—among them discrimination in employment, rights of the handicapped, student records, religion in the schools, liability, tenure, discipline of students, student rights, crime at

PEP graduates find that the skills and knowledge they acquire from the program ultimately benefit faculty, staff, students, and parents. Here Fennell talks with teachers Ann Covington and Ellen Wood (*above right*); her secretary, Margaret Wonnick (*below right*); and Linda Leonard's kindergarten class (*below*).

school, disputed custody of students, and reportage of child abuse.

Then there are subjects like recognizing and dealing with at-risk students, avoiding conflicts of interest, purchasing, budgeting, using new technology, and recruiting and interviewing prospective employees. These subjects are not treated in a perfunctory manner. For the budgeting component, for example, an Institute expert in public finance walks the principals through real examples of budget making and budget execution for a school like the principals' own school.

Keeping well also is important to PEP. Participants take cardiac stress tests and have their cholesterol levels measured. They learn about good nutrition, and an exercise physiologist from the University's Department of Physical Education suggests individual exercise programs for them. A faculty member from the UNC–CH School of Medicine talks about death, an issue that arises for someone in a school community each year.

Early in the program, the principals are told about a major requirement of PEP, the School Improvement Project (SIP). The SIP is a project—conceived, planned, and articulated during the period spent in the PEP program—that identifies a problem or area that needs improvement in the principal's school. The principal studies the problem, analyzes the resources available, and enlists the support of the faculty and if necessary the school board, the superintendent, the students, and the community. When all of the pieces are in place, the principal—with help from the school's faculty—undertakes to carry out the SIP over the next year. It is expected that as soon as that SIP is complete, the principal will begin another. SIPs have covered such subjects as developing a dropout-prevention program, implementing seminar teaching, and expanding cultural arts programs. (See page 10.)

From time to time PEP steps outside the classroom. Principals are usually some years beyond their student days, and many have had their nose to the grindstone for a long time. PEP affords the participants an opportunity to learn something new and to recharge their intellectual batteries. It includes such events as evenings at the theater and the concert hall, visits to museums and scientific institutions, and talks by distinguished scientists (among them a Nobel Prize winner), writers, and political figures (among them former President Jimmy Carter). This aspect of the PEP program is one that the principals enjoy enormously, and they take fresh ideas and new information back home.

# Seminar Teaching

Seminar teaching, also known as Socratic teaching, is one of three broad categories of instruction; the other two are didactic teaching and coaching. Didactic teaching is more familiar as lecturing, or the conveyance of knowledge by teachers with little student involvement. This method is the best known and the least effective. Coaching occurs when the teacher works with an individual student or in small groups to help students develop such skills as reading, writing, problem solving, and speaking. Coaching, used primarily in the early grades, is often discontinued as classes get larger and teachers have more students per day. Seminar teaching is rare because it is seldom taught as a system of pedagogy in schools of education and because it is so demanding of the teacher's time and energy.

The Principals' Executive Program attempts to model a balanced curriculum in which the three types of instruction are used. It makes a special effort to introduce the principals to seminar teaching, which is generally new to them. Seminar teaching is derived from the methods used by Socrates in teaching his young Athenian students, all expected to be well grounded in their subject matter, to pursue the implication of their ideas and their statements. Socrates required each student to state his ideas on the subject and then defend those ideas against Socrates' incisive questions and the questioning of the student's colleagues. The process of defense forced the student to examine every side of his statement and then either reject it entirely or modify it to make it consistent with the facts. Socrates and his students discussed philosophy, but the technique of seminar teaching is broadly applicable—it

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teaches the student to think analytically and logically about whatever the subject may be.

The PEP principals first meet seminar teaching through Machiavelli's *The Prince*, which they have all been required to read and study. That requirement of thorough preparation is a key element of seminar teaching. The seminar participants are all in this together: the leader is merely the first among equals, and each participant must be well prepared to address the challenges presented by the leader and the other participants. There is no room for off-the-wall bull sessions in well-conducted seminar teaching.

The PEP faculty member who is leading the seminar begins with one well-conceived question that requires the participants to think about their answer. The question, which is related to the reading, is a multifaceted one that has no single correct answer. The leader listens to the responses and asks questions about them. (Examples: Why did you say that? What does that mean to you? Tell me more.) He or she also facilitates student-to-student discussion. When their ideas or values appear to conflict, the participants are encouraged to question each other, thereby enlarging their understanding of the reading assignment and sharpening their thought processes.

Seminar teaching encourages questions and lively debate among participants.

Because the art of questioning is the heart of seminar teaching, the PEP principals are coached in developing questions for a variety of readings, and then they are given an opportunity to test the questions in small groups. They also must lead a seminar on either Plato's *Apology* or Sophocles' *Antigone* with their fellow classmates as participants. The PEP faculty member advises the principals to develop only three questions for the one-and-a-half-hour seminar. Most principal-leaders report that they could productively have discussed their first question for the entire time, which indicates that the question was effective.

PEP teaches its principals the skills of seminar instruction because it is an effective tool in teaching the curriculum. Besides fostering reasoning skills, adept seminar teaching "grabs" the students: they become active, excited participants in the learning process.

Several school reform movements recommend seminar teaching as one way to improve education. PEP agrees. It also believes that the principal, as the school's instructional leader, must be an example of an effective teacher, and it therefore requires each PEP participant to lead a Socratic seminar with his or her faculty before completing the program. One class session deals with planning the seminar—from who will participate to choice of reading material and from the size of the group to techniques for involving all participants. Each principal submits a written report on the seminar experience and later discusses it in class.

Seminar teaching is integrated into other areas of the PEP program. For example, long-range planning is taught by asking participants to write a plan for implementing seminar teaching in their school. Also, when principals are examining a model curriculum for language arts, mathematics, science, social studies, and the fine arts, they are asked to consider how seminars can be used in teaching these subjects.

The opportunity to participate in and conduct seminars does not end with graduation from the three-month PEP program. The three annual update conferences—two for principals and one for superintendents—always include seminars. Many principals have requested PEP's aid in helping their faculties learn seminar teaching. As a result, a number of North Carolina public schools are acquiring a new and effective teaching tool. This is the ultimate goal of PEP: that the program result in better learning for students.

*—Ann Clontz*

# A Principal's-Eye View of PEP

I first heard of the Principals' Executive Program in 1985. Then, in the spring of 1988, our superintendent casually asked whether I would like to go to the PEP summer session. In a weak moment I said, "Sure, if they'll take me." Three weeks later I got the instructions and homework in the mail: eight books and twenty articles to read, a three-page paper to write, and about twenty pages of questions to answer. I thought, "Sew your mouth up so you can keep your foot out of it."

All television and fishing stopped. I did only what I had to do as principal of Rosman High and worked on PEP. Some of the reading was tough. It forced me to concentrate and, sometimes, reread. I thought of my juniors and seniors who have to write a term paper before they get credit for English. I wondered whether I could use some of their excuses if I didn't get the work done. As time went by studying became a habit, and I realized what I could do if I committed myself.

The program was fast paced and well organized. Nearly all the presenters were excellent, but having so many so fast was, as one of my cohorts put it, "like pouring syrup on pancakes"—the pancakes absorb all they can, and then the syrup runs onto the plate until it's full. Then the syrup runs onto the table and down to the floor.

If the homework was a shock, the first week actually in PEP was a double shock. Classes started at 8:00 A.M. and sometimes lasted until 10:00 at night. For me to do what I had to do, my day started at 5:45 A.M. and ended about midnight. During the day I took notes, ate candy for energy, fought sleep, and sometimes thought ugly things about Robert Phay [PEP's director]. There was little let-up from the time the PEP session began until it ended nearly three months later.

In looking at the good, the bad, and the ugly sides of PEP, I have to say that it is by far the best program on the principalship I've ever been involved with. The intensity of the program has two sides. You may miss something because of the pace, but as with every situation, you have to deal with the way it is and carry on. The food and lodging were the weakest parts of the program. There were only a few first-class meals, and the rooms contained the bare necessities: electricity, beds, and showers. I would like to see the program funded at a level at which these areas could be first class, too. The strongest part was the professional support by the PEP personnel and the participants. The faculty and staff were excellent. They dedicated themselves to providing the best program possible and further committed themselves to assisting principals with research, legal advice, or any other problems pertaining to the principalship that may arise.

The principals who attended my session of PEP were some of the finest individuals I've ever been associated with. They were intelligent, caring people whose support for and confidence in their colleagues became indelible. They are a phone call away if I need help with a problem or just want to talk. They have become true friends.

I sum up PEP this way: My other diplomas, certificates, and awards are in a drawer some place; the one from PEP hangs on my office wall. —*Bill Cathey*

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*The author, principal of Rosman High School in Transylvania County, participated in PEP XVI in 1988. The article is adapted from one he wrote for the* Tar Heel Administrator, *published by the North Carolina Education Association's Division of Principals.*

## PEP's Required Reading


Adler, Mortimer. *The Paideia Program.* New York: Macmillan Publishing Company, 1984.

Adler, Mortimer, and Charles Van Doren. *How to Read a Book.* New York: Simon and Schuster, 1972.

*Everybody Counts: A Report to the Nation on the Future of Mathematics Education.* Washington: National Academy Press, 1989.

Fisher, Roger, and William Ury. *Getting to YES.* New York: Penguin Books, 1983.

Goodlad, John I. *A Place Called School.* New York: McGraw-Hill Book Company, 1984.

Gordon, Thomas. *Leader Effectiveness Training.* New York: Bantam Books, 1980.

Hirsch, E. D., Jr. *Cultural Literacy.* Boston: Houghton Mifflin, 1987.

Hutchins, Robert. "The Tradition of the West." Chapter 1 in *The Great Conversation.* Chicago: Encyclopædia Britannica, Inc., 1984.

Kouzes, James, and Barry Posner. *The Leadership Challenge: How to Get Extraordinary Things Done in Organizations.* San Francisco: Jossey-Bass, Inc., 1987.

McCall, John R. *The Provident Principal.* Rev. ed. Chapel Hill, N.C.: Institute of Government, 1988.

Phay, Robert, ed. *Education Law in North Carolina.* Chapel Hill, N.C.: Institute of Government, 1988.

Strunk, William, and E. B. White. *The Elements of Style.* 3d ed. New York: Macmillan Publishing Company, 1979.

Weiss, Patricia F. *Great Ideas: A Seminar Approach to Teaching and Learning.* Chicago: Encyclopædia Britannica, Inc., 1987.

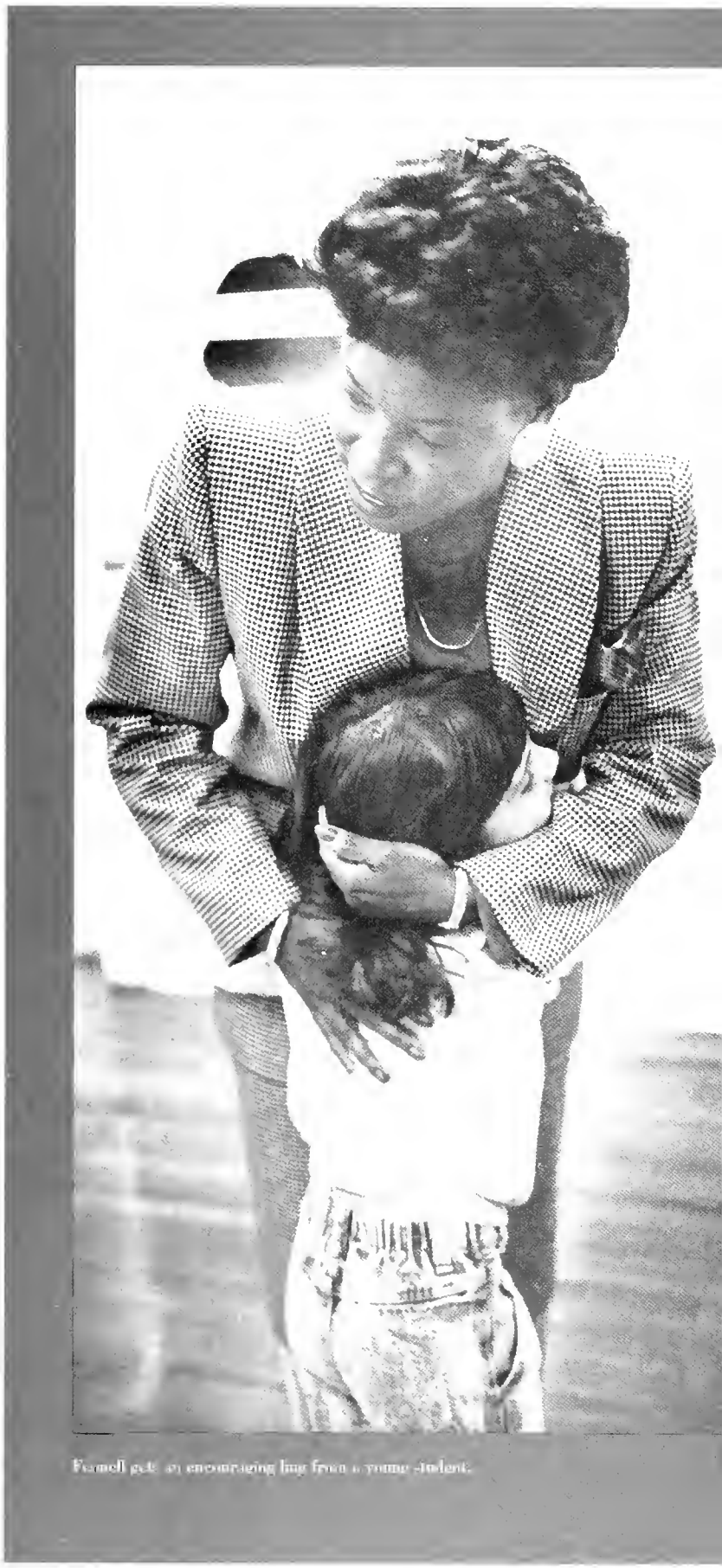
Zinsser, William. *Writing to Learn.* New York: Harper & Row, 1988.

Among the many unique aspects of PEP is the teleconferencing opportunity that comes late in the program. The PEP classroom is set up with special telephone equipment so that all of the class members may address questions to the conference guest, who may be thousands of miles away, and hear his or her replies. The guest is always a leader in national education circles. On several occasions the guest has been the well-known philosopher-educator Mortimer Adler, whose *Paideia Proposal* is thoroughly examined in the PEP program. Adler also has visited the program in person several times.

Some 800 principals have graduated from PEP thus far, and the plan is for every principal in the state eventually to have the opportunity to attend the program. So well has PEP succeeded that it has been extended to other areas of school administration. A version specially designed for superintendents is offered every other year, and PEP graduates—both principals and superintendents—come back for periodic update sessions that serve as refreshers and present new material to them. Furthermore, there have been requests to extend the program to central office administrators and finance officers.

The principals' and superintendents' programs are designed for individuals, but some activities of the PEP staff are aimed at a particular school unit that has asked for their help. Workshops for the teachers of a single PEP graduate are frequently scheduled at the Institute. And sometimes PEP goes on the road, to a retreat setting, to provide a school-improvement conference for the entire administrative staff of a particular unit. In every case, however, the aim is to support the principal's efforts at his or her school.

The Principals' Executive Program builds a strong esprit de corps among the participants. There is a certain amount of grumbling (real at first, pseudo at the end) about the quantities of work they have to do, but the principals take pride in having survived the demands of PEP. They have enormous respect for each other, and they enjoy the opportunity to compare notes, to share problems, and to offer support to each other. They also know that they have been through an exceptional educational experience, one offered to them *because* they are capable and important. Their self-esteem grows, and their expectations of themselves and everyone for whom they are responsible—both staff and students—also rise. The end result is quality education—a benefit to everyone throughout the state. ❖



Fiswell gets an encouraging hug from a young student.

# Access to Computerized Public Records

David M. Lawrence

It is now commonplace that computers, from mainframes to PCs (personal computers), have become an essential part of the operations of almost every local government. Accounting, utility billing, payroll, word processing, arrest records management, building design—these are just some of the operations that make use of computers. More and more, public records that were once created and maintained manually are now created and maintained electronically, through computers. Sometimes a copy is routinely printed from such computerized records, but frequently the record is never reduced to hard copy. It exists only on computer tape or computer disk. Indeed the power of computers has enabled local governments to create new records—to manipulate raw data in new ways and provide new kinds of information.

This technological and informational revolution has developed within the existing context of public records law.[1] Although there are occasional exceptions, that law creates a presumption that any record held by a public agency is open to public inspection and copying. However, the law developed during the time of paper-based records, when the right of access and the accompanying right of copying assumed manual inspection of a piece of paper and hand copying of that paper. Not only was the computer unknown, but so was microfilm and the photocopier. How does the computerized record fit into that existing legal framework? That question—or really, set of questions—is the subject of this article. We will find that for some questions the law provides a clear answer but for others it does not. We also will find, however, that this lack of clear answers is more a function of continuing uncertainty about public records in general, regardless of form, than of the application of the public records law to computerized records.

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## Hard or Electronic Copies

If a record is maintained on computer, does a citizen's right to a copy include a right to an electronic form of that record—that is, a copy on a computer tape or disk—or may the government instead insist on providing only a print-out, or hard copy, of the computerized information? This issue illustrates the possibilities, both welcome and unwelcome, for the use of public records and the technical questions that computerization of those records raises.

### The Basic Question

Ignore, for the moment, the technical aspects of the issue. Assume, that is, that an electronic copy of the computerized record is not difficult to make or use. For the person seeking a copy of the record, the computer tape or disk can be a highly preferable medium in which to receive it. A local elections board, for example, may maintain a computerized list of voters. If a citizens' group wants to mail brochures to all voters, it may be much easier and less expensive to print addresses from a computerized list than to retype those addresses from a print-out of the same list. So too, academic researchers often find an electronic copy of a record much more useful in their work than would be a print-out because of their

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ability to manipulate the computerized data in a variety of ways without having to reenter it from a hard copy into their own computers.

Records custodians, however, have sometimes balked at providing records in electronic form, usually because of their sense that the information may be used inappropriately. For example, records custodians, both before and after the advent of computers, have often been troubled by the commercial use of public records. They recognize that many citizens resent the use of government mailing lists for commercial purposes, and they worry that one result of the resentment might be a greater unwillingness to provide information to the government. The courts have consistently held that the motives of a person seeking access to public records are irrelevant to the right to access, even if those motives are commercial, but that has not caused the custodians' uneasiness to go away. In addition, custodians often have a closely related concern about invasions of the privacy of persons listed in the records. Someone who provides her address to a public agency may not expect or welcome being called on by a salesman or solicitor who has gotten the address through a public records request. Furthermore, persons who are the subject of records may resent strangers learning and making use of the information in those records, often in ways never contemplated by the records' subject. They also may be frightened by a stranger's access to the records.

To the extent a records custodian has these kinds of concerns, they are likely to be intensified if the records are in electronic form. And to the extent the electronic form of the record makes its use easier for the person seeking access, it makes easier what the custodian may conceive of as the *misuse* of the records. Therefore the custodian may deny a request for the electronic form of the record, in the frank hope of discouraging these sorts of uses of the recorded information.

This point of view has received some support by the courts, most candidly in a Michigan decision.[2] In that case a student political organization had sought a copy of the computer tape holding the names and campus addresses of all students at Michigan State University. The information was already available in a university-published student directory, and the university offered the organization a copy of the directory or a print-out of the tape. But it refused to release a copy of the tape itself. The university recognized that the directory was clearly a public record and that it had no choice but to make available copies of it. But it argued that the directory was published in order to facilitate contacts *within* the university community. Releasing the tape, however, would facilitate contacts by persons from outside that community, far more so than the directory would, and the university thought those contacts would be unexpected and perhaps unwelcome. These arguments were persuasive to half the judges on the Michigan Supreme Court, who upheld the university's position.[3]

The other judges, however, rejected that position. They pointed out that the state's public records law guaranteed access to and copies of public *records*, not public *information*, and that in addition the law specifically included computer tapes and disks within the definition of public record. They also argued that persons seeking access to records were entitled to benefit from advances in technology, just as much as the government itself. Otherwise we might still be requiring persons to copy records by hand even though there was a photocopier ten feet away.

This Michigan case does a good job of presenting the arguments of each side in this issue, but its outcome goes against the trend of the law nationally. Out of six other cases that examined this question, five were in favor of those seeking a copy of a record in electronic form.[4] Although it's not certain, given that only two cases held against those seeking the electronic form of the record, the North Carolina courts would probably follow the national trend and require a records custodian to make a record available in electronic form. The North Carolina statutes specifically list computer tapes and disks as public records themselves, to which the right to copy applies, and this point has been important to other courts. Furthermore the attempt by records custodians to refuse making an electronic copy of the record is almost always grounded on a disapproval of the probable use of the record by the requester, and the rule for decades has been that the requester's use is not the business of the custodian.

## Technical Complications

The discussion above and the cases on which it is based proceed as if making an electronic copy of the computerized record is a relatively simple and straightforward matter. If the computer is a PC and the record is on a hard or floppy disk, making a copy *is* a simple matter. But with minicomputers or mainframes,

making a copy that will be at all useful to the person requesting it may not be simple at all. Personal computers operate, for the most part, with standardized, off-the-shelf software; and a person with one PC can normally, if he or she has purchased the correct software, make use of files created on another PC. The programs used in minicomputers and mainframes, however, typically are custom designed. As a result, one mini or mainframe computer frequently cannot be used to read a computer disk or tape originating with another mini or mainframe. When that is the case, any right to receive a computerized copy of a public record may be a very empty right indeed. Therefore if a record is kept on a mini or mainframe computer, some new programming will often be necessary in order for another mini or mainframe to read an electronic copy of that record. What is the responsibility of the records custodian for that programming? This issue was not considered by any of the courts in the cases discussed above; in each it appears that the recipient of the copy was prepared to do any such necessary programming. Based on a few cases that do decide related questions, however, educated guesses as to the responsibility of the records custodian can be made.

As is discussed below in the section "The Development and Use of New Software," courts have not been willing, except when confidential records have been mixed with records required to be open, to require records custodians to prepare new computer programs.[5] Even if the person requesting the new program is willing to pay the cost, preparation of the program will take time from other tasks, and the public agency is entitled to set its own priorities on its time. These cases suggest that a local government is similarly under no compulsion to do the programming necessary to allow another computer to read an electronic copy of a record maintained on the government's own computer. Rather, that is the responsibility of the person requesting the copy. The government probably is, however, under a duty to assist the requestor in that task to the extent possible without undue effort. For example, if the record sought is a database record, the custodian probably must provide basic instructions as to the record format, such as the width of record fields. And if the custodian possesses documentation of its own program that would be useful to someone preparing a program to read the record on another computer, the documentation is itself a public record and would need to be made available to that other person.

### Making a Copy in a Different Format

Even if there is a right to a copy in electronic form, as opposed to a print-out, the right is *normally* limited to a copy in the same format as the original. In the one case that has addressed this issue, a particular group of records was maintained on a computer disk. A citizen requested that the records be made available on computer tape and offered to pay the costs of translating the information on disk to the other format. Although the court thought there was a right to a copy on a diskette, it refused to order the custodian to make the copy in a different format.[6] This case is subject to one possible exception. The custodian in this case did not have the equipment necessary to effect the translation, and therefore the disk would have had to be taken from the custodian's office to another location where the translation could be done. There is a suggestion in the court's opinion that if the custodian had had the on-site capability of making the translation, the outcome would have been different. That is, to turn the example around, if a record is maintained on computer tape in a mainframe, and a request is made for a copy of that record on diskette, and if the custodian has the equipment available to make such a translation, it is possible a court might order the custodian to do so.

## System Elements and Outputs

It was noted in the introduction that a fundamental element of the public records law is a general presumption that any document in a public office is a public record, to which the public has a right of access. Are there any elements of a computer system, or any outputs of that system, to which that presumption might not apply? This section discusses computer passwords, software, and spreadsheets and other working materials.

### Passwords

One system element that clearly is not a public record is any password necessary to access the computer system. The security of the system—the need to control who may enter data into it—is a legitimate public concern, and passwords or other entry control devices are common components of computer security. A password is no more an accessible public record than the combination to the vault in a city's or county's finance department.[7]

### Software

A second element is the software used by and within the system. Assume, to begin with, that a local government has a large data base on a personal computer that it has created and that it accesses and manipulates through a commercial data-base program. We can assume that the information that the local government has placed in the data base is public record, and, as discussed above, it is probable that a citizen has a right to an electronic copy of the data base. But the data base is of no use unless it can be accessed, and for that task the citizen also will need a copy of the commercial software. That program also will be included within the files of the government's computer system. Does that fact make the commercial program a public record, which the citizen also has the right to copy? Probably not. Such software is usually protected by copyright, and persons who purchase such software promise not to allow general copying of it by others. That the purchaser of the program is a government, subject to public records laws, probably does not lessen the rights of the copyright holder, just as an author does not lose the rights of copyright because her book has been purchased by a public library. The citizen will have to purchase his or her own copy of the application software.

Of course not all government computers are PCs, and not all software used by governments has been purchased off the shelf. When the government computer is a mini or a mainframe, many programs will have been written specifically for the government and the ownership rights transferred to the government, or will have been developed in house by the government's own staff. For these, any copyright protection belongs to the government and not to a third party. Although the matter must be considered entirely speculative, it may be that the public records statutes operate to limit the copyright protections otherwise available to governments.[9] First, if the data files cannot be used without the government-owned software, and if that software can be used on the computer of the records requester,[9] it is probable that the government will be required to make a copy of that application software available along with any copy of the data files.[10] Second, it also is probable that the government may charge only the cost of making the copy and may not seek to charge a premium reflecting the copyright in the software. Charging a premium would be antagonistic to the general thrust of the public records law, which is to encourage the right of public access to such records.[11] Third, the government's copyright protections probably reattach once the copy has been made, so that the person receiving the copy would be under an obligation not to allow further unauthorized copying of the program.

### Spreadsheets

Spreadsheet programs are among the most commonly used programs within government. If such a program is used to develop and analyze data, and the results then used to make or publish a report, is the underlying spreadsheet file itself a public record? The answer to this question depends on how a public records law treats working papers and other raw data in general. The North Carolina statutes do not explicitly address such materials, nor have the North Carolina courts had occasion to apply the statutes to them. There have been a number of cases from other states, however, and in this area the law is unsettled. Some courts have held that rough notes, such as notes of interviews or field investigations, or other materials used to prepare a published study are not a public record; other courts have reached the opposite conclusion.[12] How a court deals with the general matter of working papers is likely to determine how it deals with the spreadsheet file.

The one case involving a spreadsheet file in these circumstances held that it was not a public record. The file involved had been prepared to help analyze a variety of financial data, and the resulting analysis was then part of an oral presentation to a government commission. Indeed the spreadsheet file was referred to in the presentation. An intermediate appellate court in New Jersey analogized the spreadsheet file to rough notes and held that it was not subject to public inspection.[13]

Until the General Assembly or the courts clarify the status of raw data, rough notes, and other forms of working papers under North Carolina law, the status of spreadsheet files also will remain uncertain.

## The Development and Use of New Software

A number of cases have addressed the questions of whether the custodian government (1) may be required to develop new software to allow citizen access to records or (2) may be required to permit a citizen to run his or her own software on the government's system. The answer depends on whether the software is necessary to allow access to records that already exist or rather to

allow manipulation of data and in essence create new records.

The first situation arises when a computerized record combines information that is public, and therefore available to access, with information that can or must be held confidential. A city might keep its personnel records on computer, merging in one data base information that is public under the personnel privacy laws with information that those laws require to be kept confidential. Or a county might maintain ambulance records on computer, merging in a single file billing information, which is public, and medical information, which is not. The cases, both those involving electronic records and those involving hard copy, uniformly hold that the public has a right to the public component of such a mixed record. The custodian must either extract the public portion and make it available, or must make the entire record available, in some fashion blocking out the confidential portion. If the record is computerized, the easiest way to provide access to the public portion of the record may be to write a new program that generates the public portion only; and when that can be done, the courts have consistently required that such a program be developed.[14]

Creating a new program to access only the public information in a mixed record will of course cost money, either in staff programming time or in payments to a private consultant. Who must pay these costs? The cases that have held that such a program must be prepared and that then have addressed the cost question also have held that the costs of preparation can be charged to the person seeking access to the record. At least one other case, however, seems to suggest that if a new program is necessary, the government must pay the cost.[15] In that case the court argued that the custodian was under a duty to allow access to those records that were public, and that the duty could not be avoided by mingling those records with others to which the public did not have a right of access. The custodian, that is, was under a duty to program the computer in such a way that the public portion of the file could be made available to the public on request. There is considerable force in that argument, particularly as to records that are subject to a specific statutory right of access, such as certain personnel records. But, as noted, at present the case law is clearly on the side of charging the requester the full cost of preparing the special program.

The second situation arises when a citizen approaches the government and asks for access to the government's computer system in order to extract information that is useful to him or her but that is not used by the government and therefore is not available without new programming. This situation differs from the first, because in the first the information sought is available through the government's software; it is just mixed together with information that can or must be kept confidential. In the first situation, new software is necessary simply to separate the public from the confidential information. In the second situation, however, the citizen is seeking to develop new forms of the information in the computer, to develop a new record if you will. Typically the citizen is quite willing to develop and pay for the software for this task. The question is whether the government can be required to run that software on its system.

Only a few cases have raised this question, but by and large the courts have not required the government to run the software.[16] These cases leave the matter to the discretion of the trial court, directing such a court to balance the right of access against the possible disruption caused to the unit's use of the system by running the new program and the possible danger to the system's integrity caused by a foreign program. In refusing to require this sort of access, the courts have been consistent with earlier cases, involving paper records, in which courts have refused to require custodians to develop new forms of information from the records in their possession.[17]

Many of the data bases used with personal computers are *relational* in nature. This means that once the data is entered into the data-base files, the program permits someone using those files to ask questions of the data base, perhaps organizing and then extracting the information in ways unintended when the file was established. This sort of data-base program is still not available with many larger computers, however. That is why, for such computers, new programs must be written in order to organize and extract the computerized information in ways not needed by the government maintaining the record. As governments begin to make greater use of relational data bases with larger computers, the question will arise as to whether records custodians will be required to allow members of the public to ask questions of the data base. The cases just discussed do not resolve this question, because those cases all involve the need for additional programming. With a relational data base, additional programming is unnecessary. The ability to ask questions is part of the basic program.

It seems likely that custodians will be required to allow such inquiries. If the records were in hard copy, a citizen would have the right to examine them and reor-

ganize the information in ways that are useful to him. The query feature of a relational data base essentially has the computer do the same task. One recurring notion found in the judicial decisions considering computerized forms of public records is that the public, seeking access, is entitled to the benefit of advancing technology, just as is the government. If the information sought can be brought forward through the computer, without the need for additional programming, the policies of access that underlie the public records law argue for allowing public use of that capacity. If such requests require staff time to make the inquiries, it is probably possible to charge a reasonable fee to recover that cost. But it is doubtful that such a request could be denied altogether.

## Electronic Mail

If a computer is part of a network or is connected to a modem, the operator may be part of an electronic mail system, able to communicate with others through the computer. Are those messages public record? As long as they remain accessible, they probably are.

If one co-worker calls another by telephone, and neither makes a memorandum on the conversation, the public records law is irrelevant to the conversation. There is no record, and so there is nothing to have a right of access to. But if the co-worker writes the same information into a memorandum, which she then sends to the other person, the written memorandum is a record, and there is probably a right of public access to it.[18] (That right continues only as long as the memorandum exists. The recipient might discard the memorandum as soon as it was read or acted upon, and at that point the record would cease to exist.[19]) These basic rules govern the treatment of electronic mail messages. If a copy of the message is retained, either within the computer system or in hard copy, that copy would be analogous to a written memorandum, would therefore be a public record, and would be available to public inspection. But if no copy had been made, or the copy had been discarded or erased, the message would take on the flavor of a telephone call, a recordless event to which the public records law did not apply.

## Summary

Probably the most litigated question involving computerized public records is whether a records custodian may, at his or her option, supply a requester a record in hard copy as opposed to electronic copy. Although a few state courts have allowed custodians to furnish only the hard copy, the trend of the decisions is clearly that, when a record is maintained in electronic form, the public is entitled to a copy in that same form. Although none of the cases discussed the technical difficulties inherent in making and using such copies, it seems clear that any new programming necessary to make use of such an electronic copy is the responsibility of the person making the request and not of the custodian.

Not all elements and outputs of a computer system are public record. Clearly any passwords are *not* public, and it may be that computer outputs that are comparable to rough notes, such as spreadsheet files, also are not open to public access. One major uncertainty is whether the copyright laws create an exception to the right of inspection and copying with regard to software for which the government holds the copyright.

Sometimes information in electronic form cannot be conveniently accessed by the public without new programming. With one exception, any such new programming is the responsibility of the person seeking access to or a copy of the record and not of the records custodian. The exception arises when a single set of records contains both public and confidential information and programming is necessary to extract the public part only. The cases have required the government to do that sort of programming, although the majority of the cases have permitted the government to charge the cost of that programming to the person requesting the record.

Finally, two minor points. First, as governments turn more often to using relational data-base programs on minicomputers and mainframes, permitting system users to query the data base for new sorts of information, it is likely that the government maintaining the data base will be required to permit members of the public to make such queries. And second, electronic mail messages probably are public records and therefore open to public access, so long as they continue to exist. The law does not, however, require that such messages be retained any longer than the sender or receiver needs them. ❖

## Notes

1. For more information on North Carolina public records law, see David M. Lawrence, *Interpreting North Carolina's Public Records Law* (Chapel Hill, N.C.: Institute of Government, 1987).

2. Kestenbaum v. Michigan State Univ., 414 Mich. 510, 327 N.W.2d 783 (1982).

3. The lower courts had held for the university, and the state supreme court divided three to three on the appeal. Because of the even split, the lower court decisions were affirmed.

1. The five cases that required making a copy of the computer tape itself are American Fed'n of State, County, and Mun. Employees v. County of Cook, 136 Ill.2d 334, 555 N.E.2d 361 (1990), *reversing on this point*, 538 N.E.2d 776 (Ill. App. 1989); Menge v. City of Manchester, 113 N.H. 533, 311 A.2d 116 (1973); Ortiz v. Jaramillo, 82 N.M. 445, 483 P.2d 500 (1971); Skikszay v. Buelow, 107 Misc. 2d 886, 436 N.Y.S.2d 558 (N.Y. Sup. Ct. 1981); and Martin v. Ellisor, 266 S.C. 377, 223 S.E.2d 415 (1976). The one case that permitted substituting a print-out for a tape is State *ex rel.* Recodat Co. v. Buchanan, 46 Ohio St. 3d 163, 546 N.E.2d 203 (1989).

5. See the cases cited in note 16 of this article.

6. Blalock v. Staley, 293 Ark. 26, 732 S.W.2d 152 (1987).

7. *See* Rea v. Sansbury, 501 So.2d 1315 (Fla. Dist. Ct. App. 1987) (special telephone number, available only to county department heads and used to monitor county commission meetings, is *not* a public record).

8. John A. Kidwell, "Open Records Laws and Copyright," *Wisconsin Law Review* (1989): 1021.

9. This will not always be possible. Without the same make of computer and the same systems software, the government's applications software may not be usable. That is why new programming is often necessary to make use of the government's computerized records on other machines.

10. One case seems relevant, although not fully in point. In *Recodat*, 46 Ohio St. 3d 163, 546 N.E.2d 203 (1989), the county kept computerized land record information on magnetic tapes in the possession of a private contractor. The contractor used its proprietary software to access the taped information. The Ohio Supreme Court held that to the extent there was information on the tapes that was not available in hard copy, the county was obligated to make the tape available and accessible in its own office, at a cost that did not include any charge for the proprietary software.

11. *Recodat*, 46 Ohio St. 3d 163, 546 N.E.2d 203.

12. *E.g.*, Shevin v. Byron, Harless, Schaffer, Reid, and Assoc., 379 So.2d 633 (Fla. 1980) (notes of interview *not public*); Wiley v. Woods, 393 Pa. 341, 141 A.2d 844 (1958) (field investigation notes of property survey *not public*); La Plante v. Stewart, 470 So.2d 1018 (La. Ct. App. 1985) (materials used to prepare a published study *public*); MacEwan v. Holm, 226 Or. 27, 359 P.2d 413 (1960) (raw data of scientific study *public*).

13. Asbury Park Press, Inc. v. State, 233 N.J. Super. 375, 558 A.2d 1363 (N.J. Super. Ct. App. Div. 1989).

14. *E.g.*, Family Life League v. Department of Public Aid, 393 N.E.2d 1051 (Ill. 1986); State *ex rel.* Stephan v. Harder, 641 P.2d 366 (Kan. 1982); Menge v. City of Manchester, 113 N.H. 533, 311 A.2d 116 (1973).

15. State *ex rel.* Beacon Journal Publishing Co. v. Andrews, No. 75AP-118, slip op. (Ohio Ct. App. 1976) (LEXIS, States Library, OH file).

16. Three cases that seem to take this position are Siegle v. Barry, 422 So.2d 63 (Fla. Dist. Ct. App. 1982); State *ex rel.* Scanlon v. Deters, 45 Ohio St. 3d 376, 544 N.E.2d 680 (1989); and Texas Indus. Accident Bd. v. Industrial Foundation of the South, 526 S.W.2d 211 (Tex. Civ. App. 1975).

17. *E.g.*, Mergenthaler v. Commonwealth State Employees Retirement Bd., 33 Pa. Commw. 237, 372 A.2d 911 (1977).

18. There is no North Carolina case law on whether internal communications are public records, and the case law from other states is mixed. *Compare Shevin*, 379 So.2d 633 (Fla. 1980) (dicta) (*public*), *with* Jessup v. Superior Court, 151 Cal. App. 2d 102, 311 P.2d 177 (1957) (*not public*).

19. The Records Dispositions Schedules promulgated by the State Division of Archives and History, pursuant to North Carolina General Statutes Section 121-5, permit erasing electronic mail messages once agency needs end.

Attendants of the January, 1918, meeting of the North Carolina City Managers Association pose in front of the Carolina Inn in Pinehurst.

# The Policy Role of the Local Government Manager: Changing Views over Seventy-five Years

James H. Svara

The council-manager form of government is based on an elected council and a manager appointed by the council and accountable to it. From its origins in 1908, this plan has sought to mark off the appropriate spheres of responsibility for the council and the manager. The division of roles is intended to keep the council out of excessive involvement in administrative affairs and to maintain democratic control of the manager. The shorthand guide to this separation of spheres has been that "the council handles policy and the manager takes care of administration."

One problem with this way of thinking about responsibilities is reconciling the obvious contributions made by local government managers to policy and community leadership with the "theory" of separate spheres. For example, should the manager bring to the attention of the council problems in the community that require solutions? Should the manager propose major changes in policy when they are necessary? Most managers and

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council members agree, yet these actions might appear to contradict the notion that the manager should stay out of policy matters. Indeed some managers have said that they are involved in policy issues, but "it didn't use to be that way" or "it's not supposed to be like that." In fact the views of practitioners and scholars about the manager's policy leadership have shifted over the seventy-five years since the founding of the International City Management Association (ICMA) from positive to negative to ambivalent, with a return to the positive view that is now well established.

Why is it important to review these shifting opinions? Recently committees of both the League of Municipalities and the Association of County Commissioners identified the need for leadership as one of the major problems their governments will face in the future. Are city and county managers to act as leaders for their communities? If so, what is the rationale and justification for such behavior? This article examines the historical answers to the question of whether the manager should or does provide policy leadership and, in the conclusion, considers the implications of the historical record for the public and for the members of the local government manager profession today.

## The Positive View

The theoreticians of the council-manager plan and the early managers themselves did not adhere to a fundamental dichotomy between policy and administration. This form was endorsed by the National Municipal League in its New Municipal Program adopted in 1915, which replaced the organization's first Model Charter published in 1900. The commentary that accompanied the second Model Charter published in 1919—in effect the *Federalist Papers* for the council-manager plan—did not advance the policy-administration dichotomy for the new form of government.[1] It did distinguish "legislation" from "administration," naturally assigning the former to the council and the latter to the manager, but the commentary indicated in many places that the manager should be active in policy matters.[2] According to *A New Municipal Program*, the manager is expected to exert great influence on "civic policy." The manager has a "double function, the conduct of current administration, and persuading the representatives of the public so far as he can that his plans are wise." The manager should be present at council meetings in order to "exert the influence upon their opinions that he ought to have." The manager must "show himself to be a leader, formulating policies and urging their adoption by the council." Thus the founders of the plan intended for the manager to provide leadership and advice to the council in its enactment of legislation.

Other early commentators agreed. Richard Childs, although commonly cited as the promoter of a narrow role for the manager, in fact saw the manager as a leader and had high aspirations for the profession. At national meetings of the City Managers Association (the predecessor to ICMA) in 1917 and again in 1918, he stated his position eloquently. On the latter occasion he said:

> Some day we shall have managers here who have achieved national reputation, not by saving taxes or by running their cities for a freakishly low expense per capita, but managers who have successfully led their commissions into great new enterprises of service.[3]

The key idea in the council-manager plan was not a dichotomy of spheres that excluded the manager from policy but rather the concept of the "controlled executive."[4] The value of the plan came not from having a glorified clerk but rather a capable executive who would offer policy leadership to the council and who, at the same time, would accept the supremacy of the representative body.

## The Negative View

Despite these opinions, a narrowing of the definition of the manager's position began in the 1920s. The idea of separate but shared responsibilities is somewhat difficult to explain. Because complete separation was easier to communicate, or perhaps to allay suspicions that the council-manager form of government would lead to administrative dominance, popularizers of the plan stressed the idea that the manager should be simply an administrative technician. The manager may offer advice, Charles Fassett suggested in a handbook in 1922, "but if he is wise he will seldom advise except when so requested, and will leave to them [the council members] their specific functions as completely as they must leave administrative work to him."[5]

Some observers warned that the manager was assuming too much power and violating the plan when active in policy. Even one supporter of an extensive policy role conceded that the "theory" of the council-manager plan did not allow a policy role but instead argued that the "theory must be reformulated."[6] The leadership role implicitly accorded the manager in the plan and explicitly

justified by the authors of the New Municipal Program was being defined out of existence.

For the next twenty years, the weight of official opinion in the ICMA supported the normative requirement that the manager stay out of policy. The strongest advocacy of strict adherence to this dichotomy model came during the orthodoxy of the thirties and forties.[7] As an issue of philosophy within the ICMA, the matter was settled for a time with Clarence Ridley and Orin Nolting's *The City-Manager Profession* in 1934 and the 1938 Code of Ethics. The manager should not "let himself be driven or led into taking the leadership or responsibility in matters of policy."[8] In general the manager should stay "out of the limelight as much as possible." The 1938 Code of Ethics seemingly closed the door on a policy role: "[T]he city manager is in no sense a political leader."[9] The orthodox dichotomy model was in place a quarter century after the founding of the ICMA.

## The Ambivalent View

Despite this assertion of the orthodox position, every empirical study of the manager's roles (before and since) has found policy involvement. Leonard White observed in the first field study of the role of city manager that "the office of the city manager has become the great center of initiating and proposing (but not deciding) public policies as well as the sole responsible center of administration."[10] In the next major study, published in 1940, Stone, Price, and Stone concluded that it was "generally impossible for a city manager to escape being a leader in matters of policy."[11] Managers eschew "political" leadership (for instance, partisan or electoral involvement, exchanging council support for rewards, or appealing over the head of the council to the voters) but are active in "community" leadership. "To ask a city manager to avoid incursion into policy would be to set up an impossible distinction between policy and administration: it would be, in effect, to ask him not to be a city manager."[12]

The idea of community leadership found supporters within the ranks of managers. C. A. Harrell of Norfolk, Virginia, in his ICMA presidential address of 1948, identified the "ideal manager" as a "positive, vital force in the community." As a "formulator of action and a planner," the manager "visualizes broad objectives, distant goals, far-sighted projects."[13]

Ridley shifted his opinion as well. He concluded after surveying managers in 1958 that the "city manager by the very nature of his job acts as a policy formulator."[14] In the same year, Bosworth dropped the veil completely by proclaiming that "the manager *is* a politician." As a "policy researcher" the manager is a "city-statesman" who brings a knowledge of urban affairs and awareness of best practice to guide the progress of the community. "Let us think" of managers, Bosworth concluded, "as officers of general administrative direction *and* political leadership, for that is what they are."[15]

The research of Kammerer and her associates in ten Florida cities found managers who were involved in all aspects of policy making. "They were right in the heart of politics, in the broadest sense of that term."[16] Wright concluded in his analysis of a national survey of managers that managers combine "preponderant authority in the sphere of administration"—the managerial role—with influence over agenda setting and policy formulation—the policy role. The manager is the "dominant policy initiator in most manager cities."[17] Loveridge found that managers in the Bay Area of California expressed support for attitudes and behaviors that are consistent with activism and policy leadership. More than half viewed their position as a political leader.[18] Banovetz and Stillman both called for managers to assume and recognize new leadership responsibilities.[19]

Not all practitioners, however, have accepted the position that managers are policy leaders. There is still ambivalence in the attitudes of managers. Stillman found in 1981 that managers were evenly divided between a "Back-to-the-Fundamentals School" and a "Forward-to-the-New-Horizons School."[20] Approximately half the managers surveyed in three states expressed a preference for acting as an administrator and leaving policy to the council, and Green reported that most managers actually behave this way, at least some of the time.[21] Thus some managers may accept the doctrine of separation, and others may hold onto it as a refuge while they engage in policy anyway.

Ironically, one way to avoid the issue is to periodically rediscover it. Policy activity has time and again been treated as if it were newly emergent, produced by changes in cities and a shift in the characteristics of persons entering the field. In a recent example, Ammons and Newell argued that new conditions make it necessary for managers to be "more than mere technocrats."[22]

As we have seen, managers have always been more than technocrats. By treating the policy role as a new one, however, practitioners and scholars have not had to come to terms with it. The apparent deviation of practice from

theory is treated as a new development. Rather than coming to grips with the implications, the nature of the manager's contributions is forgotten, only to be "rediscovered" in a new study.

## A Return to the Positive

### Recent Research

Research in recent years has provided extensive evidence of the manager's policy and leadership role based on surveys of managers. These studies may be summarized briefly:

- Huntley and Macdonald: Virtually all managers in a national survey always or nearly always participated in the formulation of policy and set the council agenda (89 percent and 90 percent, respectively).[23] Most initiated policy (64 percent) and played a leading role in policy making (62 percent).
- Browne: Almost three quarters of the managers in Michigan considered their leadership to be very necessary, and only 3 percent considered it to be unnecessary or inappropriate.[24] Managers had high success rates in securing acceptance of their proposals.
- Green: More than 90 percent of the managers in a national survey always or sometimes played a leading role in policy making, initiated policies, and participated in policy formulation. Only 15 percent never spoke on controversial issues or refused to work through influential community members to achieve policy goals.[25]
- Wirth and Vasu: Half the managers in a national sample would make a considerable effort to shift the priorities of the council in a direction that reflects the manager's value preferences if the council took an opposing position.[26]
- Newell and Ammons: Managers surveyed in cities of all sizes spent roughly half their time in policy (32 percent), including council relations, and political matters (17 percent), including community leadership but excluding partisan involvement.[27]
- Svara: Managers surveyed in North Carolina and Ohio were actively involved in all activities of city government, tending not only to advise but to take the initiative in mission and policy. Their involvement in these areas was only slightly lower than it was in administration and management decisions.[28]

### Implications for the Future

More than twenty years ago, John Bollens and John Ries offered a conclusion that summarized the historical evidence and anticipated later research: Taking part in the policy process as well as managing the operations of the city "*was, is, and will continue to be the unique contribution of the profession.*"[29] There are four important implications to be derived from this position.

First, current managers have more to learn from their predecessors than they may think. To be sure, every age has distinct pressures and challenges, and the relationships with other officials and the community do change. Still the leadership role of the manager has remained essentially the same from the beginning.

Second, managers, ICMA, and scholars need to set the historical record straight to remove an artificial criticism of the council-manager plan. The chief complaint against the plan—that managers have usurped the proper authority of the council by their involvement in policy—misses the mark in two respects. The manager as a comprehensively active leader is the role the founders intended, not a deviation from the original model. Furthermore, active involvement by the manager is accompanied by extensive contributions from the council.[30]

Third, practitioners and scholars can stop talking about whether the manager is a policy leader and rather discuss how the manager provides leadership, how the manager handles different areas of policy, and how effectively the manager serves as a policy adviser to the council. The question is not "Is the manager a leader?" but "How good a leader is the manager?"

Finally, more discussion is needed of the constraints and obligations associated with policy leadership. How does the manager recognize and deal with the limits of his or her policy-making activity? Such activity is neither an ethical lapse ("you shouldn't be doing this") nor an ethical no-man's-land ("you're on your own"). Rather, leadership is an ethical obligation, and the standards by which the manager should act must be clarified.

One sign of the maturity of the local government manager profession in its fourth quarter century will be an acceptance of the community leadership and policy role without equivocation or apology. As Eric Anderson, a city manager in Wisconsin, stated recently: "Managers *are* directly involved with policy determinations that shape the future of their municipalities, and they play key roles in policy development and implementation."[31] Having acknowledged their role, managers can fully

consider and elaborate their responsibilities as appointed professionals in a democratic governance process. Rather than setting up a screen by reciting that the "council makes policy and the manager administers it," or avoiding the issue by presenting it as a new one, there should be a complete discussion of how the council and the manager make policy as well as an examination of how the manager, in interaction with the council, administers it.

The founders in the New Municipal Program conceptualized a governmental form based on representative democracy and public-serving professionals. Local government managers are active in policy, but they are not autonomous, nor do they wish to be. They continue after seventy-five years to be "controlled executives" who offer their leadership and expertise to the service of their communities. ❖

## Notes

1. Clinton Rogers Woodruff (ed.), *A New Municipal Program* (New York: D. Appleton and Co., 1919), 153–55. For a complete review of early thinking on the council-manager plan, see James H. Svara, "Progressive Roots of the Model Charter and the Manager Profession: A Positive Heritage," *National Civic Review*, 78 (September October 1989): 339–55.

2. Woodruff, *A New Municipal Program*, 31, 38, 42, 130.

3. Quoted in Leonard White, *The City Manager* (Chicago, Ill.: University of Chicago Press, 1927), 113.

4. See Richard S. Childs, "The Theory of the New Controlled-Executive Plan," *National Municipal Review* 2 (January 1913): 70–81.

5. Charles M. Fassett, *Handbook of Municipal Government* (New York: Thomas Y. Crowell Co., 1922), 12.

6. Ellen Deborah Ellis, "The City Manager as a Leader of Policy," *National Municipal Review* 15 (April 1926): 204.

7. Richard J. Stillman II, *The Rise of the City Manager* (Albuquerque, N.M.: University of New Mexico Press, 1974), 51.

8. Clarence C. Ridley and Orin Nolting, *The City-Manager Profession* (Chicago, Ill.: University of Chicago Press, 1934), 13, and 30.

9. "The City Manager's Code of Ethics" (1938), reprinted in Stillman, *Rise of City Manager*, app. D, 121.

10. White, *The City Manager*, 225.

11. Harold A. Stone, Don K. Price, and Kathryn H. Stone, *City Manager Government in the United States* (Chicago, Ill.: Public Administration Service, 1940), 213.

12. Stone, Price, and Stone, *City Manager Government*, 247.

13. C. A. Harrell, "The City Manager as a Community Leader," *Public Management* 30 (October 1948): 290–94.

14. Clarence C. Ridley, *The Role of the Manager in Policy Formulation*, quoted in Stillman, *Rise of City Manager*, 59–60.

15. Karl L. Bosworth, "The Manager *Is* a Politician," *Public Administration Review* 18 (Summer 1958): 222.

16. Gladys M. Kammerer et al., *City Managers in Politics* (Gainesville, Fla.: University of Florida, 1962), 83.

17. Deil Wright, "The Manager as a Development Administrator," in *Comparative Urban Research*, ed. Robert T. Daland (Beverly Hills, Calif.: Sage Publications, 1969), 224–25.

18. Ronald O. Loveridge, *City Managers in Legislative Politics* (Indianapolis: Bobbs-Merrill, 1971), 51–55.

19. James M. Banovetz, "Environment and the Role of the Administrator," in *Managing the Modern City*, ed. James M. Banovetz (Washington, D.C.: International City Management Association, 1971), 83; Stillman, *Rise of City Manager*, 103, 110.

20. Richard J. Stillman II, "Local Management in Transition: A Report on the Current State of the Profession," *The Municipal Year Book 1982* (Washington, D.C.: International City Management Association, 1982), 172.

21. In surveys of managers in North Carolina, Ohio, and Oklahoma, 52 percent, 16 percent, and 53 percent, respectively, agreed with this position. The North Carolina and Ohio data are from surveys by the author in 1987 and 1988, respectively. The Oklahoma data are from Michael W. Hirlinger and Robert E. England, *City Managers and the Legislative Process* (Tulsa, Okla.: University of Oklahoma Bureau of Governmental Research, 1986). In a national survey Roy E. Green found that 85 percent of the managers at least sometimes behaved in this way. "Local Government Managers: Styles and Challenges," *Baseline Data Report* 19 (March April 1987): 3.

22. David N. Ammons and Charldean Newell, "'City Managers Don't Make Policy:' A Lie: Let's Face It," *National Civic Review* 77 (1988): 124–32.

23. Robert J. Huntley and Robert J. Macdonald, "Urban Managers: Organizational Preferences, Managerial Styles, and Social Policy Roles," *The Municipal Year Book 1975* (Washington, D.C.: International City Management Association, 1975), 119–58.

24. William Browne, "Municipal Managers and Policy: A Partial Test of the Svara Dichotomy-Duality Model," *Public Administration Review* 45 (September October 1988): 620–22.

25. Green, "Local Government Managers": 1–11.

26. Clifford J. Wirth and Michael J. Vasu, "Ideology and Decision-making for American City Managers," *Urban Affairs Quarterly* 22 (March 1987): 454–71.

27. Charldean Newell and David N. Ammons, "Role Emphasis of City Managers and Other Municipal Executives," *Public Administration Review* 47 (May/June 1987): 246–52.

28. James H. Svara, "Policy and Administration: Managers as Comprehensive Professional Leaders," in *Ideal and Practice in City Management*, ed. H. George Frederickson (Washington, D.C.: International City Management Association, 1989), 70–93.

29. John C. Bollens and John C. Ries, *The City Manager Profession: Myths and Realities* (Chicago, Ill.: Public Administration Service, 1969), 5, italics in original.

30. James H. Svara, *Official Leadership in the City: Patterns of Conflict and Cooperation* (New York: Oxford University Press, 1990), ch. 3. Councils are more active in cities with managers than in those with strong mayors.

31. Eric Anderson, "Two Major Forms of Government: Two Types of Professional Management," *The Municipal Year Book 1989* (Washington, D.C.: International City Management Association, 1989), 29.

# Land-Use and Development Moratoria

David W. Owens

One morning members of a county's board of commissioners began receiving calls from concerned citizens about a large, new rock quarry and stone-processing business that had just been announced for a residential area of their rural township. The citizens were concerned about noise, traffic, environmental effects, and potential negative impacts on their property values. The commissioners were sympathetic, but the county did not have zoning or other development regulations in place, and the proposed project was moving quickly.

In a neighboring small town, the zoning administrator was being besieged with calls from downtown merchants concerned about a video arcade being installed in an abandoned building. They wanted to know if the town was going to allow this on a site they believed had inadequate parking, and they expressed considerable doubts about the wisdom of allowing such a use to be located downtown. The zoning administrator had to tell them that the town's twenty-year-old zoning ordinance did not address these concerns.

And in the county seat, the city planning department received preliminary plats for four large subdivisions and a rezoning application for a new industrial concern and small shopping center. The jobs and extra housing these projects would bring would be welcome additions to the city, but there were concerns that this influx of development might overwhelm the capacity of the city's water and sewer system. Furthermore all of this development was being proposed for a part of the city where a major update of the land-use plan had recently been initiated. In response to the concerns raised by neighborhood groups about traffic, preservation of open space, and increasing commercial intrusions in residential areas, the planning board had concluded that the existing plan and zoning for this area were obsolete. Based on this recommendation the city council directed the planning department to initiate a major update of the land-use plan for this area, a process that would take six months to complete. The publicity about these impending changes in the plan and zoning ordinances no doubt was a key factor in the timing of the development applications, as several applicants told the planner that they had hastily put proposals together in order to beat any more restrictive standards that might be coming.

In all three instances, the local government involved would like to consider putting a temporary hold on the proposed developments while they get their plans, ordinances, and public facilities straightened out. What planning tools are available to accomplish this? Do North Carolina localities have the authority to use them? If so, what procedures must be followed and what limitations must be observed?

The answers to these questions are not entirely clear, because neither the North Carolina courts nor the legislature have directly addressed the matter. This article provides the background that should be considered by a local government contemplating a development moratorium.

## Interim Zoning Ordinances

One approach a local government can take to temporarily preserve the status quo while longer term solutions are devised is to adopt an interim zoning ordinance. An interim zoning ordinance, sometimes

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called a *stop-gap ordinance*, is an ordinance that typically allows existing land uses to continue or expand and similar uses to be established. But it maintains the status quo by not allowing different uses to be established while a more detailed permanent zoning ordinance is being developed. Interim zoning differs from regular zoning in that it is adopted quickly, is not based on the thorough studies that underlie regular zoning, and is intended only to temporarily preserve current land uses, not designate areas suitable for long-term future development. Interim zoning is usually adopted where there was no previous zoning.

Where zoning is already in place, portions of the city or county may be placed in temporary *holding zones* (such as allowing agriculture and large-lot residential use only) while the appropriate long-term zoning classifications are developed. Similarly, the text of a zoning ordinance may be amended to temporarily restrict certain uses in some or all of the city or county. Again, the feature that distinguishes this approach from regular zoning is the intended temporary nature of the restriction.

Some states allow interim zoning ordinances to be adopted without going through the detailed public notice and other procedures required to adopt regular zoning ordinances. This is not the case in North Carolina. Despite their differing intent and purpose, interim and regular zoning are not legally different in North Carolina. The North Carolina Supreme Court has ruled that even zoning ordinances intended to be temporary in nature must follow all of the statutorily required procedures for zoning to be valid. An example was an attempt by the town of Waynesville in 1936 to prohibit the erection of a gasoline filling station on Main Street. An oil company leased a lot and obtained a building permit for the station. But before construction started, the town hastily passed a "zoning" ordinance that created one interim zone, which happened to consist only of the block that included this lot, and prohibited one use in that zone, not coincidentally filling stations. The supreme court in *Shuford v. Town of Waynesville*[1] ruled that because the required zoning ordinance adoption procedures set by state law were not followed—there had been no public hearing, no comprehensive plan prepared, no planning board or board of adjustment established—the interim ordinance was not a valid zoning ordinance.

An interim zoning ordinance can be adopted in North Carolina, but it must follow all the requirements for a regular zoning ordinance. This includes establishing a planning board, publishing two notices of a public hearing in successive weeks, and applying the ordinance comprehensively. Also if the interim ordinance is to automatically expire at a fixed date in the future, that fact needs to be included in the draft ordinance and public notice, as repeal of a zoning ordinance must follow all the same procedures as adoption or amendment.[2] Given the time required to draft such an ordinance, provide for appointment of a planning board and their review of the draft, provide the required public notice, and hold the mandated hearing, it is unlikely that a new interim zoning ordinance could be adopted by a North Carolina city or county in less than two to three months. An interim amendment to an existing ordinance could be adopted more quickly, as the planning board would already be in place. But even in this situation the public notice and hearing requirements for zoning amendments must be met, a process that takes several weeks.

## Moratoria

Given the time required to adopt an interim zoning ordinance or amend an existing ordinance, local governments occasionally want to take more immediate action to put a hold on proposed projects or maintain the status quo while new regulations are being considered or new public improvements are put into place. Final decisions on major land-use policies should not be made hastily. The complexity of the issues, their controversial nature, the time required to conduct adequate studies and prepare plans, and the need to allow broad public participation in the debate mean that a careful and deliberate course often needs to be followed by the local government. Yet there may well be a need to keep problems from worsening during this period of consideration. The most frequently discussed means of securing this "breathing space" is adoption of an ordinance establishing a moratorium on certain approvals, or adoption of a resolution directing the local government's staff to cease processing applications for certain approvals. In North Carolina this has included moratoria on subdivision approvals, rezonings, building permits, and water and sewer hookups or extensions.

In determining whether these development moratoria are legal in North Carolina, two questions must be resolved. First, is there adequate statutory authority to enact moratoria? Second, do moratoria violate landowners' constitutional or other legally protected rights?

## Statutory Authority

The state has the authority to exercise its police powers to protect the public health, safety, and welfare. In addition to specific authority for land-use regulation and the provision of public services, general police powers have been delegated by the state to cities and counties:

> A city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.[3]

Local governments also have been delegated the authority to regulate businesses and prohibit those that are nuisances or that may be inimical to the public health, welfare, safety, order, or convenience.

In addition to this general police power, several statutes give local governments specific land-use and development regulatory authority. The zoning enabling acts grant cities and counties authority to regulate and restrict density of population and the location and use of land and buildings. Within zoning districts they may regulate and restrict the erection, construction, reconstruction, alteration, repair, and use of buildings and land for a variety of purposes, including preventing overcrowding, facilitating the adequate provision of public services, and promoting health, safety, and welfare. The subdivision statutes authorize regulations to provide for the orderly growth and development of cities and counties. Other more specific statutes authorize regulation of floodways, water supply watersheds, airport areas, places of amusement, and public health nuisances. The statutes are silent, however, as to local governments' specific authority to adopt development moratoria.

The question then is whether these grants of authority to regulate and prohibit certain activities to protect the public health, safety, and welfare include the authority to adopt moratoria. For discretionary acts of the governing board, such as rezonings, they clearly do. A governing board is under no obligation to change its zoning, and it can withhold that approval as its sound judgment dictates. A moratorium on rezonings can be established by the governing board's refusal to adopt amendments to an existing, valid zoning ordinance. For nonregulatory matters, such as decisions on the extension of utility services or hookups to water and sewer systems, local governments can impose reasonable restrictions when necessary to respond to problems such as a lack of treatment capacity. For example, recently the city of Jacksonville successfully defended in the federal courts a moratorium on multi-family sewer hookups imposed due to a lack of wastewater treatment capacity.[4]

Authority to impose moratoria on the approval of existing required development permits—temporarily suspending regulatory approvals such as building permits or plat approvals—is less certain. The main reason for this uncertainty is the standard that is used to interpret delegation of state authority to local governments. If the traditional rule of strict interpretation is applied, a court would have to determine whether the power to adopt a moratorium is implied either in the general grants of power discussed above or the land-use enabling statutes, as North Carolina's statutes do not explicitly delegate the authority to adopt moratoria. While a substantial majority of courts considering this question in other states have ruled that such power is implied, several have ruled that it is not.[5]

Considering the legislative mandate adopted by the North Carolina General Assembly in 1971 that local governments' powers are to be broadly construed to include supplementary powers that are expedient to carrying out expressly granted powers, it is likely that North Carolina's courts will hold that cities and counties do have the authority to adopt reasonably limited development moratoria. Because local governments have been granted both general authority to prohibit acts detrimental to the public welfare and specific authority to regulate land use, supplementary authority for development moratoria is an expedient, and occasionally necessary, power. This conclusion is buttressed by the fact that the North Carolina Supreme Court has long granted considerable leeway to legislative determinations as to how delegated powers are carried out.[6] This judicial deference should extend to a city or county governing board's reasonable determination that a moratorium is needed to protect the public health and safety. Even so, a solid connection needs to be established linking the need for a moratorium to the specific or general powers of local government to regulate land use and development.

For example, there may be a need to temporarily prevent new land uses that would create public health and safety problems due to a lack of water, sewer, transportation, waste disposal, schools, or other necessary public services.[7] There may be situations where a moratorium is needed to address an unanticipated threat to the most appropriate use of land in the city[8] or county, or to prevent the establishment of land uses that

would be inconsistent with pending zoning,[9] historic preservation,[10] or watershed protection measures.

It may be important for a local government to carefully specify whether it is relying on the general police power or the zoning enabling act for its statutory authority for a moratorium. This is important because there are different procedural requirements that may have to be met depending upon which choice of underlying authority is used. Courts in some states have required all mandatory notice and procedural requirements for zoning ordinances to be followed if zoning rather than the general police power is used as the underlying statutory authorization for moratoria. If the North Carolina courts were to take this tack, the degree of the urgency of the problem generating the need for a moratorium is likely to be the key factor to be considered in choosing which statutory authority should be used. For those problems that present a substantial threat to the public health, safety, or welfare, the more expedited procedures for general police power ordinances are warranted. Where the problem is more routine, the basic land-use authority and procedures are appropriate.

## Constitutional and Other Limitations

In those situations where a local government has the statutory authority to impose a moratorium, care must be taken to exercise that authority in a constitutionally sound manner. There are two key provisions in the state constitution that require moratoria to be carefully limited. Article 1, Section 1, provides that citizens have the inalienable right to the enjoyment of the fruits of their own labor, and Article 1, Section 19, provides that no person shall be deprived of their property but by the law of the land. In interpreting these provisions the supreme court has ruled that restrictions on businesses and property use are valid only if they are (1) established for a purpose falling within the scope of the police power and (2) actually and reasonably adapted to accomplish that legitimate purpose. To meet this standard a moratorium must have a rational, real, or substantial relation to one or more of the purposes for which the police power is exercised and must not be unreasonable or oppressive in its operation.[11] Therefore a moratorium should be based on a clearly documented need and should have a carefully limited duration that is based on the time it takes to address the reasons for its imposition. Also the moratorium should be neither overly nor underly broad: it should address all of the land uses that generated the need for the moratorium but no others.[12]

A related question that bears on the reasonableness of a moratorium is the extent to which lawful businesses can be subject to moratoria. One older North Carolina case held that a general ordinance may not permanently prohibit a lawful use throughout a city.[13] Because moratoria adopted under the general police power ordinances must apply uniformly throughout the jurisdiction and should apply equally to existing and future uses, this holding emphasizes the importance of a limited duration for a moratorium. Failure to observe this limitation resulted in the attempted gas station moratorium in the *Shuford* case being ruled invalid.

Another limitation on moratoria is the extent to which they can be applied to projects that are already underway. Once a project has received a building permit or substantial expenditures have been made in good faith reliance on a valid governmental approval, that project can generally be completed as approved. Also the 1990 General Assembly adopted legislation, effective October 1, 1991, that will allow landowners to submit development plans that, if approved by the local government, will lock in the existing zoning regulations on the type and intensity of land uses for up to five years. An exception to these rules on vested rights is present if there is a strong public interest in having the proposed development comply with the newly adopted ordinance. For example, a Winston (now Winston-Salem) ordinance adopted to protect the public health and safety by prohibiting wooden buildings in the congested central part of town was upheld by the state supreme court in 1894 even though it caused suspension of previously contracted work.[14]

Finally, a question arises as to whether moratoria constitute an impermissible taking of property without compensation. The takings clause of the United States Constitution has been interpreted to mean that *if* a regulation is found to be an unconstitutional taking, even temporarily, compensation must be paid to the landowner. The United States Supreme Court has ruled that this does not apply to normal delays in obtaining building permits, variances, or amendments to zoning ordinances. Whether a moratorium of reasonably limited duration is a "normal delay" is an open question. Courts in other states recently have held that moratoria ranging from six to eighteen months while plans were being prepared were not unconstitutional takings.[15] In any event, a moratorium adopted to prevent either a serious public

safety problem or the establishment of a noxious use is not a taking.

## Conclusions

It is likely that North Carolina local governments have the statutory authority to impose temporary development moratoria, though a firm conclusion on this question must await legislation or litigation. This can be done as an interim zoning ordinance if the full statutory procedures for zoning are followed. A moratorium also can be adopted by ordinance as a general police power regulation if it is needed for the protection of the public health, safety, or welfare.

It is important for a local government considering a moratorium to carefully tailor it to address the particular problem at hand in order for the action to be reasonable. Care should be exercised in determining the urgency of the need, with use of a moratorium limited to those situations where there is a pressing public need for action that cannot be reasonably addressed in any other way. Moratoria should not be used to address routine land-use issues, as normal zoning and related land-use tools can adequately handle such issues.

A moratorium should have an explicitly limited duration, with its length being reasonably related to the time it is expected to take the local government to address the problem that led to adoption of the moratorium. For example, it would be unreasonable to have a two-year moratorium when its purpose is to maintain the status quo for six months while a plan and rezoning are considered. However, if it will take an estimated two years to plan and construct a necessary wastewater treatment plant expansion, it would be reasonable to have a two-year moratorium on sewer hookups. The notion of an explicitly limited duration of moratoria has been a critical factor in a number of court decisions upholding moratoria, as the courts have been willing to sanction temporary restrictions imposed in response to urgent needs that would not be allowed as permanent measures.

An ordinance establishing a moratorium should be as specific as is possible as to its cause, duration, geographic coverage, and subject matter coverage. There should be no vagueness as to what is being regulated. For example, it should be clear whether a moratorium applies to new land uses only or also to expansions or replacement of existing uses.

Lastly, it is important that action be initiated to address the problem leading to the moratorium. The moratorium itself cannot be the answer or solution. It should only be used as a good faith means of providing the time for a reasonable long-term solution—be it new plans, ordinances, or public improvements—to be developed and put into place.

The three situations cited at the beginning of this article illustrate the importance of carefully considering these factors before imposing a moratorium. In all three instances, zoning and other land-use ordinances could be adopted or amended on an interim basis to address the concerns while more permanent solutions are devised. But the full statutory process must be followed and that takes time. A moratorium may or may not be warranted in the three cases to hold the line while this is done.

In the rock quarry situation, the potential impacts on traffic, environmental quality, property values, and the character of the surrounding rural community create an urgency that would likely justify a temporary moratorium under the general police power on building permits for mines and quarries. But the governing board would need to do this by ordinance, carefully considering and documenting the potential impacts of inaction. The board also would need to design and embark on a course of action while the moratorium is in place to more fully study the issue and develop appropriate land-use regulations. The board also would need to limit the duration of the moratorium to a reasonable period for doing this.

The video arcade situation, on the other hand, while of real concern to the neighboring businesses, is less likely to present a level of urgency sufficient to justify a general police power moratorium. Questions such as the adequacy of off-street parking requirements are more properly addressed by normal ordinance updates. A normal zoning text amendment, not a building permit moratorium, is the best course of action for this situation.[16] The question of exactly when a newly realized problem rises to the level of urgency to warrant a moratorium is a judgment call that must be made by local elected officials.

The subdivision and shopping center is an intermediate situation, but in all likelihood a subdivision plat and rezoning moratorium would be warranted. Action was initiated by the city to address concerns with traffic, open space, and community character. A limited moratorium to preserve the status quo in order to allow public debate would prevent a rush to develop in ways that may be inconsistent with the resulting plan. The more difficult question here is whether a degree of urgency suffi-

cient to justify use of a general police power moratorium exists or whether the zoning and subdivision ordinances should be amended to impose a temporary moratorium. This question generally is left to the judgment of the city's elected officials. The water and sewer shortage, if documented, would further establish a clear public health and safety basis for a moratorium and thereby further support use of the expedited general police power process.

In sum, development moratoria serve an important purpose no other land-use management tool can accomplish. They allow a temporary freeze on development activity while rational, long term solutions to urgent problems can be developed, publicly debated, and implemented. Adopting a moratorium is a serious step for a local government. Moratoria should be judiciously employed, carefully limited, and supported by adequate planning and legal study of each particular instance for which its use is considered. If a local government does this in its careful consideration of a moratorium, its use is legally defensible in North Carolina. ❖

## Notes

1. 214 N.C. 135, 198 S.E. 585 (1938). *See also* Bizzell v. Board of Aldermen of City of Goldsboro, 192 N.C. 361, 135 S.E. 58 (1926). Courts in other states have allowed interim zoning while comprehensive zoning was being prepared. *See, e.g.*, Miller v. Board of Pub. Works, 195 Cal. 477, 234 P. 381 (1925), *error dismissed*, 273 U.S. 781 (1927). Several states explicitly give local governments statutory authority to adopt interim zoning ordinances. For more information on this subject, see Robert Anderson, *American Law of Zoning*, 3d ed. (Rochester, N.Y.: Lawyers Cooperative Publishing Co., 1986), vol. 1 § 5.24; Annotation, "Validity and Effect of 'Interim' Zoning Ordinance," 30 A.L.R.3d 1196 (1970).

2. Sofran v. City of Greensboro, 327 N.C. 125, 393 S.E.2d 767 (1990); Orange County v. Heath, 278 N.C. 688, 180 S.E.2d 810 (1971).

3. N.C. Gen. Stat. § 160A-174(a) (hereinafter the General Statutes will be cited as G.S.). The comparable county statute is G.S. 153A-121. In addition, authority for several other specific types of regulations also are set forth in the statutes at G.S. 160A-178 to -197 and G.S. 153A-125. The enumeration of specific areas of potential regulation is not exclusive or a limiting factor on the general police power. G.S. 160A-177, 153A-121.

4. McCauley v. City of Jacksonville, 739 F. Supp. 278 (1989), *aff'd per curiam*, 904 F.2d 700 (1990). *See also* G.S. 113-215.3(a)(8) and -215.3(a)(12) regarding the state's authority to impose moratoria on construction and operation of new or additional waste treatment systems and on new pollution sources.

5. Courts in twenty-three of the twenty-nine other states that have considered the question of implied statutory authority for moratoria have ruled that such authority is included in the general police power or municipal home rule charters, and three of the six holding that there was inadequate authority upheld at least some form of moratoria. Edward Ziegler, *Rathkopf's The Law of Zoning and Planning* (New York: Clark Boardman Company, Ltd., 1990), vol. 1 § 11.03.

6. Broadnax v. Groom, 64 N.C. 244 (1870). *See also* State v. Warren, 252 N.C. 690, 114 S.E.2d 660 (1960); Rosenthal v. City of Goldsboro, 149 N.C. 128, 62 S.E. 905 (1908).

7. *See, e.g.*, Associated Home Builders v. City of Livermore, 18 Cal. 3d 582, 557 P.2d 473 (1976) (schools, sewer, and water capacity); Metro Realty v. County of El Dorado, 222 Cal. App. 2d 508, 35 Cal. Rptr. 180 (1963) (water supply); Charles v. Diamond, 41 N.Y.2d 318, 360 N.E.2d 1295 (1977) (sewer capacity).

8. *See, e.g.*, SCA Chemical Waste Serv. v. Konigsberg, 636 S.W.2d 430 (Tenn. 1982).

9. *See, e.g.*, Sherman v. Reavis, 273 S.C. 542, 257 S.E.2d 735 (1979).

10. *See, e.g.*, City of Dallas v. Crownrich, 506 S.W.2d 654 (Tex. Ct. App. 1974).

11. An ordinance may not, for example, declare a lawful land use to be a nuisance when it is not necessarily in fact a nuisance. Barger v. Smith, 156 N.C. 323 (1911). Where there is an arguable public benefit of the regulation, the judicial trend has been to defer to legislative judgment and allow the regulation. Poor Richards, Inc. v. Stone, 322 N.C. 61, 366 S.E.2d 697 (1988); A-S-P Assoc. v. City of Raleigh, 298 N.C. 207, 258 S.E.2d 444 (1979); Smith v. Keator, 285 N.C. 530, 206 S.E.2d 203 (1974); State v. Warren, 252 N.C. 690, 114 S.E.2d 660 (1960).

12. Ordinances in North Carolina have been invalidated both when they regulated one land use but unreasonably exempted very similar uses [Cheek v. City of Charlotte, 273 N.C. 293, 160 S.E.2d 18 (1968)] and when they regulated more uses than necessary to meet the stated purpose of the ordinance [Treants Enter., Inc. v. Onslow County, 320 N.C. 776, 360 S.E.2d 783 (1987)]. For an example of a moratorium being invalidated due to a failure to observe a reasonable fixed length, see Deal Gardens, Inc. v. Board of Trustees of Village of Loch Arbor, 48 N.J. 492, 226 A.2d 607 (1967).

13. Kass v. Hedgepeth, 226 N.C. 105, 38 S.E.2d 164 (1946). *See also* State v. Bass, 171 N.C. 780, 87 S.E. 972 (1916).

14. State v. Johnson, 114 N.C. 846, 19 S.E. 599 (1894). *See also* McCauley v. City of Jacksonville, 739 F. Supp. 278 (1978), *aff'd per curiam*, 904 F.2d 700 (1990); Angelo v. City of Winston-Salem, 193 N.C. 207, 136 S.E. 489 (1926); Small v. Councilmen of Edenton, 116 N.C. 527, 60 S.E. 413 (1908).

15. Zilber v. Town of Moraga, 692 F. Supp. 1195 (N.D. Cal. 1988); S.E.W. Friel v. Triangle Oil Co., 76 Md. App. 96, 543 A.2d 863 (1988) (nine-month zoning approval moratorium); Noghrey v. Acampora, 543 N.Y.S.2d 530 (App. Div. 1989) (six-month moratorium).

16. However, in a somewhat analogous situation, a federal court upheld a ten-and-a-half-month moratorium on fast food restaurants imposed by New Orleans to protect a "picturesque, stable, historically important" neighborhood while ordinance revisions were considered. Schafer v. City of New Orleans, 713 F.2d 1086 (5th Cir. 1984). *See also* McDonald's Corp. v. Village of Elmsford, 156 A.D.2d 687, 549 N.Y.S.2d 448 (1989) (twelve-month moratorium on fast food restaurants upheld).

# Unit Pricing for Solid Waste Collection

Glenn E. Morris and Denise C. Byrd

Finding safer and less expensive ways to manage municipal solid waste (MSW) is an important challenge facing many communities in the United States. Alarmed by possible damage to the environment and human health, citizen groups and public agencies have eliminated or reduced the use of disposal options like ocean dumping and sanitary landfills. Implementing new disposal options, such as lined and monitored sanitary landfills, resource recovery plants, and shipment to remote disposal sites, is difficult and costly. For example Durham County, North Carolina, is now in the process of siting a new landfill. The county estimates that permitting and constructing the 740-acre site will take four years after the site is selected, and the land purchase, engineering, and construction costs will be $29 million.[1] A more rural area, Rowan County, North Carolina, recently opened a 380-acre landfill site that took about three years to site, permit, and construct and that cost an estimated $5.4 million.[2]

Caught between the increasing cost of waste disposal and the inevitability that people will continue to generate waste, private firms and public organizations have been scrambling to come up with better ways of managing MSW. One such approach—unit pricing of waste collection services based on the weight, or volume, and type of waste collected—has recently been introduced or improved in more than a dozen communities in the United States. The basic idea behind unit pricing is that households and businesses that use more of the service pay more for waste collection and disposal. A common method of unit pricing is to charge customers per bag of waste, with an upper limit on the bag's weight. It is expected that households would then generate less waste and therefore reduce the cost of waste collection and disposal.

Unit pricing is not entirely new. Some communities, such as Seattle, Washington, and Portland, Oregon, have used variants of unit pricing for decades. For most of the United States, however, unit pricing of MSW collection and disposal is an innovation. Until recently most United States communities financed MSW collection and disposal through fixed periodic fees, for example $6.00 per month, or indirectly through general taxes, such as the local property tax.[3] Now many of those communities are turning to unit pricing, while communities that already had unit pricing programs have improved their programs.

## Advantages and Disadvantages

### Equity in Financing Public Services

Unit pricing conforms to one of the more prominent equity principles: the principle that the user pays. In other words, those that generate more waste pay for the additional service. This notion of equity has received considerable attention in recent years as community leaders, fearful of the political consequences of raising general taxes, study and adopt "user fees" to finance community services. However, another prominent principle used in financing public services is that the user's ability to pay should be considered. If this principle is applied, shifting from property taxes to unit prices for solid waste management may be seen as "regressive" because a larger share of the cost is borne by those who are less wealthy or have less income.

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## Changes in Waste Flows

Unit pricing encourages customers to reduce the amount of mixed waste they set out for collection. This conserves valuable labor and material resources used in collecting and disposing of mixed waste. If the prices selected are equal to the marginal cost of waste collection and disposal, then an economically efficient level of waste generation and resource conservation is obtained. This means that the incremental value of the resources such as land, labor, and equipment used in collecting and disposing of an additional unit of a household's solid waste is just equal to their value in the next best use to which these resources might be put. In the process of affecting the quantity of conventional mixed waste that a household sets out for collection, unit pricing also affects other household solid waste flows: Households may change the level and composition of the goods they purchase, choosing to buy products that generate less waste. They may increase their use of "internal" household recycling, for instance reusing shopping bags, as well as "external" recycling.

As demonstrated by Morris and Holthausen,[1] the relationships between these elements of household waste flows and unit pricing can become quite complicated. In general, however, setting or raising a unit price for conventional mixed waste encourages MSW customers to reduce the amount of material they generate and to use other means of disposal. Reducing waste generation while at the same time increasing recycling is likely to increase conservation of virgin materials and other resources generally. However, the advantages of unit pricing may come at the price of such adverse effects as increases in littering or backyard burning of waste.

## Costs for MSW Managers

Many MSW managers are drawn to unit pricing because of its potential for reducing the net cost of solid waste collection and disposal. By adopting unit pricing, MSW managers may realize these savings:

1) Lower mixed waste collection and disposal costs because customers are disposing of less mixed waste
2) Additional revenues from the sale of recyclables as customers take advantage of recycling programs to reduce their waste disposal (if a recycling program is operated)

While these features may reduce some of the costs of solid waste management, unit pricing will also impose some additional costs on the system:

1) Additional labor, materials, and equipment required to collect additional recyclable materials (if a recycling program is operated)
2) Additional labor, materials, and equipment required to collect litter or other diverted waste
3) Additional costs associated with monitoring quantities of waste collected from each customer
4) Additional costs of enforcing the unit pricing program and related restrictions
5) Additional program administration costs

It is impossible to generalize the net effect of these influences on the total cost of waste service. As we describe later, the amount of the effect and whether the effect is positive or negative will vary with the structure of the program and the features of the community.

## Costs for MSW Customers

Under unit pricing, some customers may experience cost savings, especially if MSW managers pass on cost savings at the system level in the form of lower unit prices for individual households. Cost savings are particularly likely for smaller and lower income households in communities where unit pricing replaces a system that charged a fixed fee per unit time. Because these households produce less solid waste, their monetary outlay for waste collection and disposal should decline under the unit pricing program. In communities where the unit pricing system replaces a levy on property as the means of financing solid waste collection and disposal, customers who own relatively valuable property and generate relatively little waste will find unit pricing especially attractive. On the other hand, households that generate large amounts of mixed waste, whether rich or poor, may find their out-of-pocket expense for waste collection and disposal increases, even after they take steps to reduce their mixed waste generation.

Some customers may experience additional costs aside from payments for mixed waste collection and disposal. They may invest time and money in waste-reducing activities such as storing recyclable materials, composting organic wastes, or compacting trash. Although they undertake these activities voluntarily, customers still bear costs. Indeed, unit pricing shifts

costs from the community MSW manager to the customer and across customers from those who demand a low level of mixed waste collection to those who demand a high level.

Some residential customers bear an extra, tax-related cost if a unit pricing program replaces a program that financed community MSW management through local property taxes, which are deductible on state and federal income taxes. Even if the community lowers property tax rates to reflect the new financing arrangement, tax payers who itemize deductions may find that losing the deductions increases their effective cost of mixed waste collection and disposal. For example, those households in the 33 percent marginal tax bracket will find that, after taxes, they pay the full dollar rather than sixty-seven cents ($1.00 minus $0.33), for a dollar's worth of waste collection and disposal services.

### Other Effects

Unit pricing programs are sometimes marketed and adopted as "clean" programs, because the programs incorporate restrictions on the sizes and types of waste receptacles used. This may lead to uniform receptacles in the service area, which may be more aesthetically pleasing. Furthermore, the restrictions may also improve the health conditions in a community. For example, sealed, airtight solid waste containers minimize problems with flies, odors, and waste scattering. As mentioned earlier, an increase in backyard burning and littering could be an unaesthetic and unhealthy side effect. Finally, regardless of their reasons for adopting unit pricing, MSW managers can benefit from the additional information on waste flows in their community that results as they account for each household's use of waste management services. The community can use this information to redesign or refine waste management programs generally.

## Program Structure

Unit pricing programs throughout the United States vary in design to reflect the characteristics and needs of the communities they serve. Through reviews of the solid waste literature and contacts with state and local solid waste managers, sixteen such programs were identified and evaluated for purposes of our study.[3] These are described in Table 1. Though not described in the table, a program of similar structure was identified in North Carolina. Jones County operates a waste service financed partially through a per unit charge required to purchase specially marked waste bags. The remainder of the cost of the service is financed through general tax revenues.

### Features of Unit Pricing Programs

All sixteen programs identified set prices based on volume. Although some programs set weight limits, the communities have not committed resources for strictly enforcing these limits. However, many European communities, as well as Seattle, Washington, have planned experiments with automatic weighing and bar coding devices to examine the feasibility of weight-based pricing. Service providers typically control the waste quantities by restricting collection to specified containers. Most programs require residents to purchase specially marked bags sold at waste service offices, municipal offices, or local stores. These low-cost, easily marked, plastic bags keep administrative costs down and provide customers with a unit of measure small enough to allow them to realize cost savings from a small change in their waste generation (for example, by putting out five bags rather than six). Pricing structures include per-container charges alone or in combination with flat service fees or property-based taxes. Generally, however, the price of the bag is set to cover the cost of the bag and of collecting and disposing of its contents.

As an example, Perkasie, Pennsylvania, sells its residents two sizes of plastic bags—20 pound and 40 pound. Customers pay for the service they receive entirely through the cost of purchasing bags. In 1988 and 1989 the majority of bags sold, well over 80 percent, were the larger size. Waste managers in Perkasie sampled bags of waste collected to determine the average weight of the waste in each bag. In both years, residents placed an average of 17 pounds of waste in a bag. Perkasie's program design is typical of other bag programs. Some communities, however, use reusable cans or cart-type waste receptacles instead; still these receptacles are specifically designated for the program and are the only type of container collected. Only three programs examined allow residents to use containers of their choosing, although within prescribed limits. To have these containers collected, residents must attach a sticker or tag sold by the service provider at a price meant to cover the cost of the waste collection and disposal service.

**Table 1**
**Unit Pricing Programs**

| Community (population) | Date program began | Mandatory or optional | Availability (Yes/No) Single family | Multi-unit | Commercial | Containers | Volume or weight limited |
|---|---|---|---|---|---|---|---|
| Carlisle, PA (19,000) | Early '80s | O | Y | Y | N | Program bags | V |
| Duluth, GA (10,000) | Early '70s | M | Y | N | N | Program bags | V |
| Grand Rapids, MI (170,000) | 1973 | O | Y | Y | N | Program bags; own cans w/ tags | V,W |
| High Bridge, NJ (1,000) | 1988 | M | Y | Y, if <5 units | N | Stickers for own bags or cans | VV |
| Holland, MI (30,000) | 1981 | O | Y | N | N | Program bags; program carts | V |
| Ilion, NY (9,500) | 1988 | M | Y | Y | Y | Program bags | V,W |
| Jefferson City, MO (36,000) | Late '60s | O | Y | N | N | Program bags | V |
| Lansing, MI (125,000) | 1975 | O | Y | Y, if <5 units | N | Program bags | V,W |
| Latrobe, PA (12,000) | Early '80s | M | Y | N | N | Program bags | V,W |
| Newport, NY (2,000) | 1988 | M | Y | N | N | Program bags | V,W |
| Olympia, WA (10,100) | Early '50s | M | Y | Y | Y | Own cans; bags cost extra | V,W |
| Perkasie, PA (6,500) | 1988 | M | Y | Y | Y | Program bags | V,W |
| Plantation, FL (64,000) | 1975 | M | Y | Y | Y | Program bags | V,W |
| Seattle, WA (500,000) | 1981 (revised fee structure) | M | Y | Y | N | Program cans | V,W |
| Wilkes-Barre, PA (50,000) | 1988 | O | N | Y, 4–20 units | N | Program bags | V |
| Woodstock, IL (12,000) | 1988 | M | Y | N, if >2 units | N | Program bags | V,W |

More often than not, the unit pricing programs identified are mandatory and are the only service option available to residents. Otherwise, customers likely to adopt the unit pricing option are those predisposed to generate low quantities of waste anyway. Producers of large quantities of waste would likely choose a fixed fee option that provides no incentive to reduce waste. The optional programs identified typically exist in communities where residents may individually choose to contract with private waste haulers. These haulers may offer the unit pricing option as a strategy to achieve a competitive advantage over other haulers in the area, rather than as a strategy to control waste generation and disposal behavior.

Generally, participation is mandatory only for single-family households; in some cases this is the only group of customers offered municipal services. Unit pricing service for multi-family structures (for instance, apartment buildings), when offered, is usually only one option available for this customer group. Large multi-family structures often choose other options because their trash is typically commingled in a common receptacle. In Seattle, Washington, for example, the city's waste service is used by large multi-family dwellings, but they commonly choose a fixed-fee dumpster service, rather than a unit-priced can service. Developing a program to effectively offer unit pricing services to individual households in multi-family dwellings is a challenge, particularly for urban areas composed largely of such dwellings.

## Features of Complementary Programs

When unit pricing applies only to the collection of mixed wastes, households may attempt to find alternative, less costly means of disposal. These options include such acceptable alternatives as recycling and composting or less attractive disposal alternatives, such as littering and backyard burning. To dissuade customers from selecting the less desirable alternatives, many communities have made the more desirable options readily available to their residents. Community recycling and composting programs may be particularly important in communities, such as those in rural areas, where customers may be able to choose undesirable alternatives with little risk of detection.

Some communities that did not have recycling programs prior to unit pricing have added them, and some communities that had only drop-off recycling have added curbside pickup for convenience. In addition, some communities have broadened the categories of materials collected for recycling, and some have added composting and wood-chipping programs to divert yard waste from landfills. Some communities have made these programs

| Cost (1989) | Recycling / composting alternatives (Yes/No) |
|---|---|
| $1.10 / 30-gal bag; $0.60 / 15-gal bag | Y |
| $8.50 / 20 bags, plus a minimum payment in taxes | N |
| $0.45 / 1 bag; $0.35 / 1 tag, plus 1.1 minimum mill tax | Y |
| $35 / quarter for 52 stickers a year, plus $1.65 / each add'l sticker | Y |
| $1.30 / bag or $8–10 / month / cart | Y |
| $1.50 / 30-gal bag; $1.20 / 16-gal bag | Y |
| $1.30 / bag | Y |
| $7.50 / 10 bags | Y |
| $51 / 6 months, plus $0.25 / bag | Y |
| $1.50 / 32-gal bag; $1.10 / 28-gal bag; $0.80 / 20-gal bag | Y |
| Variety of services at minimum and per-container costs | Y |
| $0.80 / 20-lb bag; $1.50 / 40-lb bag | Y |
| $16 / 20 bags | Y |
| At least $10.70 for mini-can, or $13.75 / 30-gal can and $9.00 / each add'l can | Y |
| $9.30 / 8, 30-gal bags; $5.55 / 8, 16-gal bags | Y |
| $1.22 / bag | Y |

mandatory along with unit pricing. Most of the complementary programs examined for this study are available to residents at no cost beyond what they pay for mixed waste disposal. In cases where a charge is assessed for a resource recovery program, that charge is less than the conventional disposal option.

A synergism can exist between unit pricing and recycling programs, such that the two operated together are more effective in reducing conventional waste collection and increasing recycling than each is independently. Waste managers must, however, take into consideration market conditions for recyclables when establishing recycling alternatives, as this will affect the benefits received from such programs.

## Program Effectiveness

To study the effectiveness of unit pricing programs, we developed case studies of three of the sixteen communities identified with such programs. We chose communities with different community characteristics and unit pricing program features to get a broad view of unit pricing's effects in various applications. We chose to examine only mandatory programs, as information on optional programs may not completely reflect the effects of unit pricing. Finally, we chose communities with adequate solid waste data for the analysis intended.

Perkasie, Pennsylvania, is a suburban area that has grown rapidly in the last decade as a "bedroom community" for Philadelphia and Allentown, Pennsylvania. The 6,000 to 7,000 residents are predominantly white, upper-middle class professionals living in single-family homes. Ilion, located in central New York state, is a rural community of approximately 9,500 residents employed mainly in manufacturing or farming jobs. Ilion too consists largely of single-family dwellings, but unlike Perkasie it has experienced little growth in recent years. Seattle, Washington, exemplifies the effects of unit pricing in a large, urban area. With an estimated 495,900 citizens, nearly half of Seattle's residences are multi-family units. Only dwellings with a small number of units presently participate in Seattle's unit pricing program. Unlike Perkasie or Ilion, unit pricing is not new to Seattle, and as such, Seattle offers a look at the effects of modernizing an existing unit pricing program by carefully restructuring the levels of service offered and incorporating alternative disposal programs. A second difference is that Perkasie and Ilion both had curbside recycling programs in the period examined, while Seattle did not. Ilion's program was in place before unit pricing and Perkasie's began simultaneously. Finally, Seattle offers a subscription can service, rather than a bag service as in the other two communities.

### Customer Acceptance

In the three communities we studied, unit pricing is apparently well accepted by most of the population. After unit pricing was introduced in Perkasie in 1988, residents were surveyed to determine their satisfaction with the program. Forty-two percent of those receiving the mailed questionnaire responded. Of these, an overwhelming number—more than 90 percent—supported continuing the program. The Ilion and Seattle programs reported similar levels of satisfaction among residents. Such widespread acceptance may stem from many households realizing cost savings, the sense of fairness in that those who generate the most mixed waste pay accordingly, or just the satisfaction from having an opportunity to contribute to resource conservation.

### Waste Flows

The effects of unit pricing are reflected in the quantities of waste generated by residents of the community. Table 2 shows the solid waste flows—the proportion of

Table 2
Estimated Residential Solid Waste Flows (tons per year)

| | Perkasie, PA | | Ilion, NY | | Seattle, WA | |
|---|---|---|---|---|---|---|
| | Before Unit Pricing | After Unit Pricing | Before Unit Pricing | After Unit Pricing | Before Price Increase | After Price Increase |
| Waste generated | 2,800 | 2,310 | 4,550 | 3,240 | 225,600 | 232,400 |
| Waste recycled | 280 | 820 | 170 | 190 | 40,600 | 44,100 |
| Mixed waste collected | 2,520 | 1,490 | 4,380 | 2,750 | 185,000 | 188,000 |

*Notes:*

- The periods examined are one year before and one year after unit pricing was introduced in Perkasie and Ilion. The Seattle program, because it has existed for some time, was studied before and after a sharp price increase.
- After-unit-pricing waste flows for Perkasie and Ilion were adjusted to reflect diversion activities that occurred after unit pricing was introduced. Based on conversations with local community officials, we estimated the quantity of waste that was generated but was self-disposed by backyard burning or littering, for example. We apportioned this between recycling and mixed waste and added to the waste quantities reported by the community. The total of these two adjusted streams gives our estimate of total waste generated.
- For Seattle, because of its size, the complexity of its waste service, and insufficient information, the waste flows here are those reported by the Seattle Solid Waste Utility as the quantities of residential waste collected and recycled. We assume for discussion that these quantities capture all waste generated.

the solid waste generation going to collection and recycling—for the three communities before and after unit pricing changes. Waste generation is also affected by other changes occurring simultaneously, such as community growth, changes in recycling alternatives, and economic conditions.

Ilion and Perkasie decreased the total quantities of waste generated by 29 and 13 percent, respectively. The portion of that sent to landfills fell substantially with the even larger decreases in conventional mixed waste (37 and 41 percent, respectively), as recycling quantities more than doubled in these communities. In Ilion and Perkasie, unit pricing appears to be effective in conserving landfill space by encouraging waste reduction and recycling.

The results in Seattle were not as impressive as in the Ilion and Perkasie examples. Seattle is a large, urban area, however, and unit pricing was practiced there as far back as 1969 when the city introduced a small variable charge for units of waste beyond the base level of service. In 1981 the city moved completely to a unit pricing system with its variable can rates, where residents subscribed to the number of units of waste they needed collected weekly. Initially subscription levels declined, but conventional waste collected did not. This suggests that residents compacted the same quantity of waste into fewer receptacles. The Seattle numbers in Table 2 reflect waste flows following sharp unit price increases that occurred in the mid-1980s. Seattle's waste generated increased 3 percent despite the price increase, but recycling also increased. At least part of these increases may be attributed to population growth and other concurrent changes. Despite the increases, Seattle firmly believes unit pricing is effective in conserving landfill space. Dr. Lisa Skumatz of Seattle's Solid Waste Utility insists that the quantity of conventional solid waste has increased at a much slower pace under unit pricing than it would have under other pricing mechanisms.[6]

Unfortunately, the success of unit pricing programs does not come without its associated problems, a major one being diversion to unacceptable disposal means. The waste flows previously described assume that all waste generated was properly disposed of, either through recycling or conventional collection. This is not the case. Perkasie experienced problems with increases in backyard burning after introducing unit pricing. Other problems described by the three communities include household use of commercial dumpsters and unwanted donations to charitable organizations. In addition, communities surrounding Perkasie suspected that the increases in their own waste flows were caused by Perkasie residents bringing waste to these communities for disposal. Interestingly, none of the unit-pricing communities felt that the unit pricing program had led to increases in littering. Diversion activities are extremely difficult to measure, but based on conversations with community officials, we estimate that customers in Perkasie diverted at least 410 tons of waste to unacceptable alternatives after the community introduced unit pricing. Perkasie has since implemented a burning ban and has more strictly enforced compliance with disposal restrictions. The borough claims that these efforts have virtually eliminated the diversion problems in its service area.

In our study we also estimated the percentage change in flow if there were a particular percentage change in price. We asked, for example, "What would the percentage change in waste flows be if the price were to increase 10 percent?" This type of measure, called an arc elasticity, allows us to compare how sensitive the communities are to price increases. These particular measures give us only crude estimates of responses, because they do not separate effects of other changes occurring simultaneously with the price increases. The arc elasticities[7] for Perkasie tell us that a 10 percent increase in

the price of handling one unit of waste will lead to a 1 percent decrease in total waste generated, a 2.6 percent decrease in disposal of conventional mixed waste, and a 4.9 percent increase in recycling. Ilion's numbers are similar, but Seattle's response is different. Recall, however, that Perkasie and Ilion residents were introduced to a unit pricing bag program, switching from a pricing system that they basically perceived as having zero cost per *unit* of waste. Seattle, on the other hand, experienced a sharp price increase where the price had been greater than zero for many years. More importantly, Seattle residents were able to adjust to the price increase without changing their waste generation behavior. Because Seattle uses waste cans instead of bags, residents can more easily compact their waste than can residents of communities with bag programs. Consequently, Seattle dramatically reduced waste-can subscription levels, without reducing waste quantities. This helps explain Seattle's low response to the price increase.

Finally, we examined waste flows as pounds per person per day for each of the three communities. These numbers are listed in Table 3. The per-person quantities of waste generated are similar for all three communities initially, though the communities are quite varied demographically. Again, Perkasie and Ilion reduced total and conventional mixed waste collection and increased recycling. Seattle's quantities stayed the same after the price increase. While unit pricing appears not to encourage the desired waste reductions in Seattle at the particular time examined, it seems to prevent increases that might have otherwise accompanied concurrent changes, such as higher income levels.

Table 3
**Estimated Daily Waste Per Resident (pounds per person per day)**

| | Perkasie, PA | | Ilion, NY | | Seattle, WA | |
|---|---|---|---|---|---|---|
| | Before Unit Pricing | After Unit Pricing | Before Unit Pricing | After Unit Pricing | Before Price Increase | After Price Increase |
| Waste generated | 2.5 | 1.9 | 2.6 | 1.9 | 2.8 | 2.8 |
| Waste recycled | 0.2 | 0.7 | 0.1 | 0.3 | 0.5 | 0.5 |
| Mixed waste collected | 2.2 | 1.2 | 2.5 | 1.6 | 2.3 | 2.3 |

## Program Costs

The Perkasie and Ilion programs apparently achieved savings that more than offset the additional monetary costs associated with changes in waste collection and recycling programs. In both communities several changes worked together to reduce waste generation. Each community switched to unit pricing and broadened the scope of its recycling program. In addition, Perkasie reduced waste collection frequency, a practice that other studies also have shown to encourage waste reduction.[8] Previously, Perkasie had collected mixed solid waste twice each week. With the start of unit pricing, it collected mixed solid waste and recyclables separately once each week. By reducing waste generation, both communities realized substantial savings in disposal costs, particularly because landfill fees increased rapidly in recent years with dwindling permitted landfill space. Perkasie's annual costs were roughly 10 percent lower after introducing unit pricing and curbside recycling than they would have been under the prior fixed fee system. We estimated that waste program changes lowered Ilion's costs by roughly 15 percent. In Seattle, increasing the unit price did not reduce costs much, if at all, because the community did not significantly reduce the amount of conventional waste collection.

Some customers shared in the cost reductions observed in Ilion and Perkasie. The average Perkasie household reduced solid waste disposal expenses by at least an estimated $25.00 per year. In Ilion, where waste collection had been financed out of general tax revenues, residents paid lower property taxes when unit pricing was introduced. In general customers realized lower costs, but some may have actually seen costs rise because of the loss of property tax deductions on their income taxes. In the move to unit pricing from either fixed fee or property tax financing, however, large waste generators are most likely to experience cost increases. Households also incur costs in the form of time and effort required to sort and prepare recyclables for collection. Such costs are difficult to measure. Apparently the majority of households found the costs to be less than the benefits received, judging by the popularity and success of unit pricing and related programs.

## Conclusions

Unit pricing programs can have many effects, not all of which may be attractive. These effects depend as much on other features of the community as on the features of the unit pricing program itself. Nevertheless, these programs, when combined with complementary resource recovery programs, offer a promising strategy for alter-

ing waste disposal patterns to reduce costs and extend the lives of our nation's landfills. Our brief examination of unit pricing programs found high customer acceptance. The Perkasie and Ilion examples show the success of the bag programs in some communities. Bag programs appear to encourage the intended reductions in conventional waste and increased recycling. Because the communities just recently started these programs, however, it is difficult to know whether the observed effects are permanent. Seattle's longer running program does not show dramatic changes in waste flows, but unit price increases did prompt customers to modify their waste behavior by compacting to lower their subscription rates. Examining more programs over a longer time frame will help us gain a better understanding of the impacts of modern unit pricing programs. ❖

## Notes

1. Tom Bastable, Assistant Sanitation Director, Durham City Sanitation Department, personal communication with Denise Byrd, 3 April 1990.

2. Greg Green, Inspector, Rowan County Department of Environmental Protection, personal communication with Denise Byrd, 3 April 1990.

3. E. S. Savas, *The Organization and Efficiency of Solid Waste Collection* (Lexington, Mass.: Lexington Books, 1977).

4. Glenn Morris and Duncan Holthausen, "The Economics of Household Waste Generation and Disposal" (unpublished paper, April 1990).

5. Glenn Morris and Denise Byrd, "The Effects of Weight- or Volume-Based Pricing on Solid Waste Management" (unpublished paper prepared for the U.S. Environmental Protection Agency, Office of Policy, Planning, and Evaluation, January 1990).

6. Lisa Skumatz, Rate Analyst, City of Seattle Solid Waste Utility, personal communication with Denise Byrd, 22 March 1990.

7. Arc elasticities:

| | Perkasie, PA | Ilion, NY | Seattle, WA |
|---|---|---|---|
| $\varepsilon_{G,P_c}$ | −0.10 | −0.17 | +0.03 |
| $\varepsilon_{R,P_c}$ | +0.19 | +0.48 | +0.09 |
| $\varepsilon_{C,P_c}$ | −0.26 | −0.22 | +0.02 |

The arc elasticity is defined as the percentage change in a quantity due to a change in a price. The estimates presented here are for changes in the quantities of waste generated (G), quantity of materials recycled (R), or mixed waste collected (C) due to a change in the unit price of mixed waste collection ($P_c$).

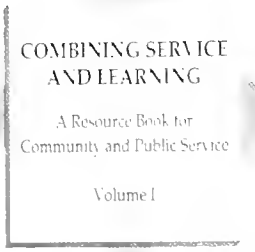
8. W. Hirsch, "Cost Functions of an Urban Government Service: Refuse Collection," *Review of Economic Statistics* 47 (1965): 87–92; J. Quon, M. Tanaka, and A. Charnes, "Refuse Quantities and Frequency of Service," *Journal of Sanitary Engineering Division* 94 (1968): 103–20.

BOOK REVIEW

# A Review of *Combining Service and Learning: A Resource Book for Community and Public Service*

A. John Vogt

*Combining Service and Learning* is a rich reference source for anyone responsible for administering student service and learning programs, such as government intern programs, or for anyone generally involved with programs that combine service, citizenship, and education to sensitize students to career opportunities and community needs. The three volume book is the result of a collaborative effort undertaken by staff, members, and friends of the National Society for Internships and Experiential Education. The effort was led by Jane C. Kendall, the society's executive director, who has spent most of her career furthering and strengthening service and learning programs.




Volume I presents chapters on principles of good practice in combining service and learning, as well as theories that underlie service and learning. Other chapters discuss public and institutional policies that can be developed to strengthen service and learning programs. Finally, the history of such programs and a discussion of their future is presented.

A "how-to-do-it" guide for service and learning programs is the subject of Volume II. Most of the chapters in this volume were written by people who are experienced in running these programs. These chapters cover such subjects as legal issues, salaries, models for youth programs, program management, the involvement of faculty, and other practical topics. Volume II also provides profiles of service and learning programs administered by selected colleges and universities, school systems, and state and local governments.

Volume III is an annotated bibliography on service and learning.

The book is extraordinary in breadth and depth of coverage (1300 total pages). This is generally an advantage. However, because of this breadth, the essentials of a successful service and learning program tend to become lost among the numerous chapters on basic theories (for the most part reprints) and lengthy treatments of some specific but not always key components (for instance, student diaries). Despite this, the book is a very important and useful addition to the library of anyone responsible for or interested in service and learning programs. ❖

Jane C. Kendall and Associates, *Combining Service and Learning: A Resource Book for Community and Public Service* (Raleigh, N.C.: National Society for Internships and Experiential Education, 1990).

*The author is an Institute of Government faculty member who specializes in state and local budgeting.*


## North Carolina Juvenile Code
### and Termination of Parental Rights Statutes

Compiled by Janet Mason and Mason P. Thomas, Jr.

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The cost is $8.50 per copy ($6.50 per copy for fifty or more), plus 5 percent sales tax for North Carolina residents. To order, call (919) 966-4119 or mail a check or purchase order to:

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AROUND THE STATE

# 1989 Awards for Financial Reporting

S. Grady Fullerton

Twelve additional governmental units in North Carolina have been awarded the coveted Certificate of Achievement for Excellence in Financial Reporting,[1] bringing the total number of North Carolina holders to forty-nine (see Table 1). Each fiscal year the Government Finance Officers Association (GFOA) of the United States and Canada awards the certificate to local government units for outstanding annual financial reports. This award is the highest form of recognition a local government unit can receive for financial reporting.

GFOA began the program in 1945 to encourage units to prepare and publish easily readable and understandable comprehensive annual financial reports covering all of their entities, funds, and financial transactions during the year. Reports submitted to the program are judged on this basis and are reviewed thoroughly by three independent evaluators, who are carefully selected for their extensive training and experience in governmental accounting.

North Carolina units have shown increasing interest in GFOA's program, as indicated by the increasing number of units receiving the award between 1981 and 1989:

| | |
|---|---|
| 1989 | 49 units |
| 1988 | 35 units |
| 1987 | 27 units |
| 1986 | 22 units |
| 1985 | 23 units |
| 1984 | 16 units |

A similar award, administered by the Association of School Business Officers International and limited to school administrative units, is the Certificate of Excellence in Financial Reporting.[2] Begun in 1971, this program also is starting to attract the attention of North Carolina units. For fiscal year 1986–87, only two units were awarded the certificate; nine received the award for fiscal year 1988–89 (see Table 2). ❖

Table 1
North Carolina Government Units Receiving
the Certificate of Achievement for Excellence in Financial Reporting,
Fiscal Year 1988–89

Municipalities
- Asheville
- Cary
- Chapel Hill
- Charlotte
- Concord*
- Durham
- Garner*
- Greensboro
- Greenville*
- Hendersonville
- High Point
- Kill Devil Hills
- Lumberton
- Morganton
- Newton
- Pine Knoll Shores
- Raleigh
- Salisbury
- Sanford
- Wake Forest*
- Wilmington
- Wilson
- Winston-Salem

Counties
- Buncombe
- Cabarrus
- Catawba
- Chatham*
- Davidson
- Durham
- Forsyth
- Guilford
- Henderson*
- Iredell
- Mecklenburg
- Moore
- New Hanover
- Orange
- Person
- Randolph*
- Rutherford*
- Transylvania
- Wake

School Administrative Units
- Asheville City School System
- Burlington City School System*
- Charlotte-Mecklenburg School System
- Hickory City School System
- Wake County Board of Education*
- Yancey County Board of Education*

Councils of Governments
- Neuse River COG

* Indicates a unit receiving the certificate for the first time.

Table 2
North Carolina School Administrative Units
Receiving the Certificate of Excellence in Financial Reporting,
Fiscal Year 1988–89

- Asheville City School System
- Buncombe County Board of Education*
- Burlington City School System*
- Carteret County Board of Education*
- Catawba County School System
- Charlotte-Mecklenburg School System
- Hickory City School System
- Wake County Board of Education*
- Yancey County Board of Education

* Indicates a unit receiving the certificate for the first time.

1. This program was described in more detail in S. Grady Fullerton, "How a Local Government Can Upgrade Its Financial Reporting," *Popular Government* 53 (Fall 1987): 27–31.

2. This program was described in more detail in S. Grady Fullerton, "How a School Administrative Unit Can Upgrade Its Financial Reporting," *School Law Bulletin* 20 (Winter 1989): 14–18.

*The author is an Institute of Government faculty member who specializes in governmental accounting and financial reporting.*

AT THE INSTITUTE

## Two New Faculty Members Join the Institute

Janine M. Crawley

Thomas H. Thornburg

This summer the Institute of Government welcomed Janine M. Crawley and Thomas H. Thornburg to the faculty. Crawley's primary responsibilities will be in the area of courts and judicial administration, while Thornburg's concentration will be in the area of criminal law and procedure.

Janine Crawley received her undergraduate degree with honors from the University of Michigan and a master's degree in history and the philosophy of science from Cambridge University. She studied philosophy at the University of Chicago for two years before going to Yale Law School, where she received her law degree this year. Crawley's work at the Institute will cover a number of areas related to courts, particularly district courts. However, she will focus primarily on issues in family law and equitable distribution.

Tom Thornburg graduated with honors from Earlham College. This year he received his law degree and a master's degree in public policy from the University of Michigan Law School and Institute of Public Policy Studies. Thornburg is not new to the Institute, as he was a law clerk there during the summer of 1989. While Thornburg's responsibilities at the Institute include the many areas covered by criminal law and procedure, he plans to work most directly with superior court judges.

*—Liz McGeachy*

## Oettinger Receives First Amendment Award

Dr. Elmer R. Oettinger, retired faculty member of the Institute of Government, was recently honored by the North Carolina Press Association when the association presented him with the third annual William C. Lassiter First Amendment Award. The award recognizes citizens outside the media profession for their commitment to First Amendment rights and open government.

Oettinger has spent much of his career promoting a greater understanding and practice of the constitutional right to freedom of speech. As he said to the Press Association, "Only through an independent, perceptive, courageous free press can a free, democratic society survive, grow, and prosper." In particular, Oettinger worked to improve relations between the press and the judicial system. In 1964 he started the News Media-Administration of Justice Council, which brought together newspaper and broadcast journalists, law enforcement officials, and judges and members of the North Carolina bar to discuss common issues. The press and the judicial system have at times been at odds, but the council, which was the first of its kind in the country, has been successful in developing an open working relationship between the two groups.

In addition to developing the council, Oettinger initiated seminars and conferences on press reporting and the judicial system, which were attended by numerous reporters and other members of the media profession. The events were held at the Institute of Government, where he was assistant director and professor of public law and government from 1939 to 1941 and from 1960 to 1978.

Oettinger also has coauthored educational materials to help journalists, court personnel, and students better understand the judicial system. He has worked with many national and international committees on the subject of the press and the judicial system.

*—Liz McGeachy*

# Off the Press

## The General Assembly of North Carolina: **A Handbook for Legislators,** Sixth Edition

Joseph S. Ferrell

This book was written primarily to serve the needs of new legislators, but it can help any citizen understand how the General Assembly is organized and how it conducts its legislative business. Topics discussed include the qualifications, election, and duties of members; legislative pay and allowances; the organization of the General Assembly; rules and procedures; the biography of a bill; legislative ethics and lobbying; and the budget. [90.19] ISBN 1-56011-176-3.

## North Carolina Legislation 1990

Edited by Joseph S. Ferrell

This comprehensive summary of the General Assembly's enactments during the 1990 legislative session is written by Institute faculty members who are experts in the respective fields affected by the new statutes. It covers such topics as the budget, courts, elections, criminal law, environment, health, land-use regulation, education, social services, utilities regulation, state and local government, and others. [90.29] ISBN 1-56011-185-2.

## Local Government **Employment Law** in North Carolina

Stephen Allred

*Local Government Employment Law in North Carolina* discusses the full range of state and federal employment laws and court decisions affecting local government personnel administration in North Carolina. It is designed to enable the practitioner—lawyer and nonlawyer alike—to find quickly and in one place the law governing such issues as dismissal for off-duty conduct, drug testing, residency requirements, the duty to accommodate handicapped employees, overtime requirements, due process rights, and more. It includes sample personnel policies for counties and municipalities. [90.07] ISBN 1-56011-165-8. $20.00.

## **Conflicts of Interest** *in Land-Use Management Decisions*

David W. Owens

*Conflicts of Interest in Land-Use Management Decisions* examines how board members deal with conflicts of interest as they make decisions on rezonings, variances, special-use permits, and subdivision plat approvals. It covers statutes, ordinances, and case law nationally and reviews in detail North Carolina law on conflicts of interest. A model ordinance and copies of relevant statutes and code provisions also are included. [90.17] ISBN 1-56011-175-5. $9.00.

Orders and inquiries should be sent to the Publications Office, Institute of Government, CB# 3330 Knapp Building, UNC–CH, Chapel Hill, NC 27599-3330. Please include a check or purchase order for the amount of the order plus 5 percent sales tax. A complete publications catalog is available from the Publications Office on request. For a copy, call (919) 966-4119.

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